

1. Introduction

1.1 As part of its mandate, the NCEUS is required to review labour laws in the informal sector, consistent with labour rights, and with the requirements of expanding growth of industry and services, and improving productivity and competitiveness. Further, the Commission is required to review the social security system available for labour in the informal sector, and to make recommendations for expanding its coverage. Moreover, the Commission has been asked to recommend measures necessary for bringing about improvement in the productivity of enterprises and generation of large scale employment opportunities. The present report on comprehensive legislation to ensure minimum conditions of work and social security to unorganised workers addresses some of these issues related to the informal sector.

1.2 The Commission is aware that certain fundamental and foundational issues such as the provision of education, health, rural roads, sanitation, housing, provision of electricity and other basic infrastructure impact on the well being and livelihoods of the workers in the unorganized sector. The provision of these services and infrastructure is being addressed in various schemes of central and the state governments. While recognizing the importance of these issues, the Commission has chosen to focus on issues which are directly concerned with unorganized sector workers *qua* workers and the growth of enterprises in this sector.

1.3 In doing this, the Commission has followed a three fold approach. It has first advocated a minimum level of protective social security for the workers, which can be both supplemented and progressively enhanced. Second, it is recommending, in this Report, a set of measures, most of which are incorporated, along with the proposed social security measures, in two comprehensive Bills, for regulation of minimum conditions of work in the unorganized agricultural and non-agricultural sectors. Third, it has examined and made recommendations for the enhancement of employment and incomes and livelihood promotion. The main recommendations, which in its opinion should get overriding and immediate priority in the scheme of things will be submitted soon to government in the form of an Action Programme for the Unorganised Sector, which also address issues relating to the Unorganised Sector in a holistic manner.

1.4 The Commission has examined the conditions of work of the Unorganised Sector Workers at great length. Its findings form part of a detailed **Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector**, which will be submitted to government within the next few weeks. Some of the findings of this Report which have a bearing on the recommendations being made here are the following:

- a) The Commission has defined the unorganised sector in non-agriculture as consisting of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated

on a proprietary or partnership basis and with less than ten total workers. In the case of agriculture, the operational holding is treated as an enterprise. The Plantation sector is excluded from this definition.

- b) According to the Commission's definition, 64 per cent of the unorganised sector workers are in agriculture, while the remaining are in non-agriculture. A majority of these workers – 64.8 per cent of agricultural workers and 62.8 per cent of unorganised sector non-agriculture are self-employed. Casual wage workers comprise 34.6 per cent of the agricultural workers, and 19.8 per cent of the unorganised sector non-agricultural workers.
- c) Compared to the Commission's estimates, other official estimates, such as the Director General of Employment and Training (DGET) and the Annual Survey of Industries (ASI) indicate that a much smaller share of the workforce is in the organised sector. According to the DGET figures, the percentage of workers in the organised sector in 2004-05 is 5.8 whereas the Commission's estimate indicates that this percentage is 13.7. The difference arises largely because the DGET estimates do not reckon with *informal* employment in the organised sector. The Commission finds that while these unorganised/informal workers (casual, contract or even regular) may be employed in the organised sector, they share the characteristics of wage workers in the unorganised sector i.e. they do not have any employment or social protection. Since existing official data describes such workers as unorganised sector workers, and since they share all the characteristics of informality, the ambit of our analysis and recommendations extends beyond *unorganised sector workers* to *unorganised/informal workers*.
- d) Unorganised workers constitute almost the entire universe of the poor. The Commission's results show that there is layering of poverty, incomes and employment among the unorganised workers. Agricultural labourers are the most vulnerable, followed by other casual workers, marginal farmers in agriculture, the self-employed in own account enterprises in rural and then in urban areas etc.
- e) According to our findings, in 2004-05, 90.7 per cent of agricultural labourers and 64.5 per cent of rural and 52.3 per cent of casual non-agricultural wage received a wage below the national minimum wage designated by the Central government (Rs. 66 per day). Even 57.3 per cent of unorganised regular workers in rural areas, and 47.2 per cent in urban areas, received a wage below this minimum.
- f) Among workers in own account enterprises, the gross value added per worker in 1999-00 was lower than the comparable minimum wage level for 57 per cent of rural Own Account Workers (OAW) workers and 30 per cent of urban OAW workers. Returns were much lower among the self employed in rural areas, and among women headed enterprises.
- g) The Commission has noted that the socially deprived groups (SC, ST, women etc.) predominate in the most vulnerable occupations. For example, SC/ST

workers are 43.5 per cent of casual labour. Women form a large (and growing) chunk of homeworkers. Muslim workers, particularly low caste Muslims, predominate in low earning self-employment oriented activities (19.4 per cent of self-employed non-agricultural workers are Muslim).

- h) The Commission has also examined in depth the condition of farmers, focusing on marginal and small farmers. Although these farmers are efficient producers, due to small holdings and lack of support, their income from agriculture is less than their meagre consumption expenditure; the debt burden on them from informal lenders is very high; and the state support to them in terms of marketing support, extension services etc. is very meagre and much lower than that available to medium-large farmers. As with other unorganised workers, they do not have any social protection.
- i) Casual wage workers and home workers, as also low paid regular workers work for long hours, without health and safety regulations, and are not entitled to overtime rates, weekly holidays etc.

1.5 These conditions indicate that there is a strong case for government regulation and support in the case of these workers. However, we have noted that a two fold approach is needed to improve the livelihoods and conditions of work of these workers.

1.6 For those workers who are employed by others, we have observed that there are some minimum standards of work that are being regulated for both formal as well as informal workers in a large number of countries across the world. These include subjects such as minimum wages, hours of work, non-discrimination, payment of overtime, periodic paid holidays etc. The Commission has taken the view that protecting minimum conditions of work is both a matter of right and human dignity. However, we are also of the view that this is entirely consistent with the needs of development as well as a growth oriented economy.

1.7 We have examined the existing regulation of the condition of workers in the unorganised sector in India and the laws that apply to wage workers in the unorganised sector, fully or partially. The Commission has concluded that existing laws cover the basic conditions of work of unorganised workers in a piece-meal and inadequate manner.

1.8 Further, the Commission is of the view that focused attention is clearly also required to enhance the earnings and livelihood of these workers. We have considered the large number of initiatives that already exist to do this. However, the Commission does not find the present scope of policies and programmes adequate to protect and promote the livelihoods of these workers. Indeed, several of the recent changes have made it more difficult for unorganised workers in many sectors and locations to eke out a living and for unorganised enterprises to survive and grow. This Commission views the protection and promotion of livelihoods as a necessary condition for ensuring decent conditions of work to the unorganised sector workers.

1.9 As part of our ongoing work, the Commission is finalising a number of detailed reports on issues such as Credit, Marketing and Technology; Skills; Growth Poles; Employment Strategy; as well as a Technical Report on Conceptual Issues and Size and Contribution of the Unorganised Sector. At this stage, however, as stated earlier, the Commission has formulated a number of recommendations on employment and livelihood improvement which we will be submitting soon to government in the form of an Action Plan.

1.10 However, the purpose of this Report is to focus on the rationale and need for comprehensive legislative protection for both agricultural and unorganised non-agricultural workers and to highlight the Commission's recommendations in these matters.

2. A Review of the Principal Recommendations of Earlier Commissions

2.1 The Commission has examined the findings and recommendations of a number of earlier Commissions and Committees and has attempted to situate its own findings and recommendations in the context of these.

2.2 The **First National Commission on Labour** (FNCL) under the Chairmanship of Justice P. B. Gajendragadkar submitted its Report in 1969. The FNCL devoted attention to labour in the unorganised sector. The main recommendations of the Gajendragadkar Commission included:

- a) First hand detailed surveys from time to time to understand the problems of the different categories of unorganised labour.
- b) Legislative protection by the state for unorganised/ unprotected labour.
- c) Simplification of legislative and administrative procedures applicable to small establishments.
- d) Expediting education and organization in the field of unorganised labour.
- e) As there is no alternative to the existing implementation machinery, what exists should be reinforced, and the inspection system should be strengthened.
- f) Steps for the protection of workers against middlemen, and development of self-help through co-operatives. Co-operatives should pay adequate wages and bonus, and give employment opportunities to the underemployed and unemployed among them (pp.434-35).

2.3 The **National Commission on Self employed Women and Women Workers in the Informal Sector (NCSEW)**, under the Chairpersonship of Smt. Ela Bhatt submitted its report (Shramshakti: Report of the National Commission on Self employed Women and Women in the Informal Sector) **in 1988**. The NCSEW recommended enlarging the definition of work done by women to include all paid and unpaid activities performed within the home or outside as an employee or on 'own account.'

2.4 In the view of the NCSEW, the single most important intervention towards improving the economic status of poor women working in the informal sector of the economy would be to devise strategies which would enhance their ownership and control over productive assets.

2.5 The NCSEW noted the flagrant violation of statutory provisions regarding payment of wages, safety regulations, provision of housing and medical facilities, accident compensation and so on. It felt the need for more stringent observance of existing labour laws and the introduction of deterrent penalty clauses. The NCSEW

recommended simplification of judicial procedures, particularly to enable unorganised workers to obtain legal redress without undue harassment.

2.6 For domestic workers, the NCSEW recommended the introduction of a system of registration. It felt that, in view of the existing trends of exploitation, it was extremely important to fix a minimum wage, and to pass legislation to regulate conditions of employment, social security and security of employment.

2.7 The NCSEW observed that the rates of minimum wage are low and have to be increased keeping in view the requirements of the woman worker and her family. Piece rates must be so fixed as to enable women workers to earn for 8 hours of work a wage equal to the time-rated minimum wage. Where work is carried out at home due to which the employer saves on installation cost and equipment, an additional amount at 25 per cent of the minimum wage should be paid. There should also be a national or regional minimum wage. Despite the Equal Remuneration Act 1976, wage discrimination is widely prevalent. This must be corrected through better enforcement and wider dissemination of the law. The Commission concluded that there is a tendency to classify the tasks generally done by women as those of a slightly inferior nature. It recommended that this should be corrected, and one way of doing this is to broad base into a single category the activities requiring work of a similar nature.

2.8 The NCSEW recommended the setting up of an Equal Opportunities Commission under a central law, and also that such a Commission should have wide powers of investigation, direction, advice and monitoring.

2.9 It further recommended the establishment of Tripartite Boards, as no law, however well conceived, would benefit women workers unless they had a major hand in the implementation of the laws. The Tripartite Boards have to be constituted in such a manner that workers have as many representatives as the government and the employers. The Tripartite Boards will regulate implementation of legislation and also contribute to making women workers visible, and empower them to be equal partners and participants in the production process.

2.10 Another recommendation of the NCSEW was that a separate wing should be set up in the Labour Department for unorganised workers with adequate number of women employees at various places.

2.11 The NCSEW also felt that no solution to the problems of women at work would be complete without taking into account their reproductive functions, which can be effectively facilitated through maternity benefit and childcare. Maternity benefits, on the scale provided under the Maternity Benefit Act, should be universally available to all women. The responsibility for this should be borne by all employers, irrespective of whether or not they employed women, through a levy calculated as a percentage of the wage bill, and placed in a separate fund from which maternity benefit could be provided. In the case of a large number of women like home-based workers and others, where the

employer is not identifiable, the responsibility for providing maternity benefits must lie with the State governments.

2.12 The NCSEW noted that though childcare facilities were provided in various labour laws, these were not being implemented, and had in fact led to the retrenchment of women workers since the employers wanted to avoid the statutory responsibilities that the law imposed. Hence, it was necessary to introduce an extended system of childcare throughout the country to reduce the burden on women and to facilitate the all round development of the child.

2.13 The NCSEW emphasized the need for regulating working hours in the informal sector where there is considerable exploitation of the poor. It recommended that piece-rates be converted into daily wages based on the normal quantum of work completed at a healthy pace, and that health insurance including compensation for accidents should be available to women workers. Every workplace had to assure safety to the workers. The Commission recommended that a comprehensive law on health and safety be formulated and enacted.

2.14 The **National Commission on Rural Labour** (NCRL) was appointed in 1987 'to look into the working conditions of this vulnerable section of our society and the implementation of social legislation for their protection.' The NCRL submitted its report in 1991. The Commission recommended a multi-dimensional strategy to lift rural labourers out of poverty. This included creation of an infrastructure to improve productivity and employment; enforcement of minimum wages and social security; introduction of central legislation for agricultural labour providing security of employment, prescribed hours of work, payment of prescribed wages and machinery for dispute settlement; introduction of a system of registration and to provide identity cards to these workers; and creation of a Welfare Fund to set up with employers' contribution in the form of a cess on land, and a nominal contribution from agricultural labour.

2.15 The NCRL made specific recommendations for various categories of workers, including handloom workers, beedi workers, construction workers, brick kiln workers, toddy tappers, fishermen, leather workers, sweepers, bonded labourers and migrant labourers. It recommended a change in the Beedi Cigar Workers Act 1966, in order to establish unambiguously the employer-employee relationship in the case of homeworkers. It also suggested some changes in the existing Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMW). It recommended that the definition of migrant workmen should be expanded to cover all migrants, whether they come on their own or through contractors, or change contractors after entering a recipient State. Amendments should be made to allow third parties to file complaints. The liability of the principal employer should be defined more clearly to prevent him from escaping liability. The contractor should be made liable for the breach of the Act either by him or by the subcontractor.

2.16 The NCRL also recommended a minimum wage of Rs. 20 per day at 1990 prices as the subsistence wage, further that no employment should be allowed at less than this level.

2.17 The **Second National Commission of Labour (SNCL)**, which submitted its Report in 2002, made a number of significant recommendations on reform and simplification of labour laws in the country. It recommended the grouping of laws into five broad categories and the new laws to cover workers in industries employing twenty or more workers.

2.18 The SNCL was specifically asked to make recommendations on umbrella legislation for the unorganised sector workers and it made a specific proposal in this regard, which we discuss below.

2.19 Thus, the earlier Commissions have tended to view the regulation of conditions of work and the protection and promotion of livelihoods in an integral framework. This is also the approach of this Commission.

3. Issue of Comprehensive Legislation for the Unorganised Non-agricultural and Agricultural Workers

3.1 In the detailed Report on Conditions of Work, the Commission has brought out the lack of comprehensive legal protection to minimum conditions of work for unorganised sector workers. It is also clear that voluntary efforts to ensure minimum conditions of work can, at best, supplement the primary efforts by the state to ensure these conditions.

3.2 The approach towards ensuring minimum conditions of work through legislation can follow one of three possible approaches viz. (i) extension of coverage of existing laws to the unprotected sector; (ii) providing a comprehensive legislation, replacing existing laws, to cover the existing sector; (iii) providing a comprehensive legislation which extends protection to the unprotected sector, and which provides a universal minimum, but which leaves the ground open for them to secure better working conditions through existing laws. In the discussion which follows, we note that all three approaches have been under consideration from time to time.

3.3 In the 37th session of the Labour Ministers Conference in 1987, it was generally viewed that the problem was not of lack of Central Legislation, but the implementation of the existing laws such as the Minimum Wages Act, the Equal Remunerations Act and other such laws that are applicable to the unorganised sector workers including workers in agriculture. However, since then, the issue of a new and separate regulation for workers in the unorganised sector have been discussed in successive sessions of the Labour Ministers' conference and the Indian Labour Conference, and this has consistently been recommended by various commissions and committees.

3.4 We have earlier noted that whereas the National Commission for Self-employed Women favoured simplification of existing laws and strengthening of the tri-partite structure of implementation, the National Commission on Rural Labour had recommended a Central legislation for agricultural workers.

3.5 Following upon the recommendations of the NCRL, the Ministry of Labour and Employment (MOLE) proposed a comprehensive legislation for regulation of employment, conditions of service and provides for welfare measures of agricultural workers in 1997. **The Bill contained provision for regulation of conditions of work, welfare, and social security.** The definition of agricultural workers covered wage workers only. For carrying out the welfare provisions, the Bill provided for registration of labourers and issue of identity cards and the constitution of Agricultural Welfare Boards. The provisions with respect to regulation of conditions of work included regulation of hours of work, overtime rates, payment of 'prescribed' wages, continuity of employment, child-care facilities, safety measures as prescribed. It also prohibited unfair labour practice interfering with the right of agricultural workers to enrol or continue as union member, discriminating against, restraining, or coercing any agricultural worker because of trade union activity, and victimizing any agricultural worker. For dispute resolution,

the Bill provided for a three-tier structure with conciliation officers for mediating in and promoting settlement of agricultural disputes, appointment of arbitrators at second level and appellate authorities at the third level.

3.6 The Second National Labour Commission (SNCL) was specifically asked to examine the issue of comprehensive legislation for unorganised sector workers. The SNCL proposed an Act to consolidate and amend the laws relating to the regulation of employment and welfare of workers in the unorganised sector in India and to provide protection and social security to these workers. **The comprehensive legislation proposed by the SNCL was thus intended to cover social security and welfare, regulation of employment and conditions of work, as well as promotion of livelihoods. The legislation was intended to cover employments, both in the agricultural and non-agricultural sectors, which were to be listed in the Schedule appended to the Act.**

3.7 The essence of the proposed Umbrella legislation was the removal of poverty of the working population of India through improving their productivity, quality of work, enhancing income earning abilities and increasing its bargaining power. Its aim was to improve the quality of employment, provide a decent life to the workers and integrate them with the growing opportunities in the country. The basic approach of the legislation is recognition and protection for all types of unorganised sector workers regardless of industry, occupation, work status, and personal characteristics.

3.8 The provisions covered by the umbrella legislation included social security, health and safety, working hours, holidays, prohibition of child labour, workers right to access the common natural resources to develop and increase his productivity through work, traditional right related to work and space, protection from unfair labour practices, retrenchment without a reasonable cause, education, training and skill development. The proposed legislation also recommended record maintenance such as a register of workers employed, muster roll cum wage payment register and wage slips to be issued to the workers with the seal of the employer. The SNCL recommended that the Umbrella legislation should be integrated into other existing laws, policies and schemes that basically control the economies of these sectors to be more effective.

3.9 The SNCL proposed a Central Board at the centre and State Boards at the State Levels for the administration of the Act. It recommended employment based Boards at the State levels. It has also recommended a district level Boards at the District level and Worker Facilitation Centres (WFCs) at lower level. The State Board (SB) was placed with responsibility of arbitration in disputes between the employers and workers' organisations if agreed by the parties and conciliate and arbitrate in disputes pertaining to the use of common property resources by the workers in the event of the matter being brought before it by one or more District Boards. The SB also had the responsibility to ensure payment of minimum wages to workers as prescribed under the law by the Central or the State Governments and also ensure timely payment of dues of such workers. In relation to the self-employed workers, the SB was to take suitable measures to ensure they earn fair incomes, receive benefits of social security, training,

and other development services, facilitate a support system that provide access to financial services, market infrastructure, and infrastructure like power, roads, warehousing, workplace, information and skill development interlinked in a holistic way. The District Boards had the responsibility to ensure implementation of the Act and other relevant labour legislations; conciliate or arbitrate in disputes pertaining to common property resources in the event of such matter being brought before it by one or more WFCs. The WFC had the responsibility to resolve any dispute arising out of employment relating to wages and working conditions through tripartite or multipartite conciliation. In case of failure of conciliation, WFCs should undertake arbitration to facilitate speedy resolution of disputes. They may also take the help of Lok Adalats or Labour Courts.

3.10 No separate grievance redressal mechanism was suggested in the draft Bill of the SNCL. However, the Board was to encourage the parties to settle their issues and disputes relating to wages and conditions of work peacefully by bi-partite or multi-partite negotiations. The labour court or Lok Adalat having jurisdiction over that area shall be empowered to hear disputes and try offences under this Act. The State Government shall constitute the concerned Appellate Authority for the above matters.

3.11 As a follow up to the SNCL recommendations, the MOLE also proposed a comprehensive legislation for regulation of employment and conditions of service of unorganized sector workers and to provide for their safety, social security, health and welfare (The Unorganised sector Workers Bill, 2004, subsequently also revised by the Ministry in 2005). This Draft Bill drew upon the recommendations of the SNCL and covered both wage workers as well as self-employed workers, in all sectors. However, only workers in scheduled employments were proposed for coverage. The Bill provided for Schemes of social welfare to be funded through contributions by governments and workers and their implementation through Workers Facilitation Centres (WFCs) and State/Central Welfare Boards. The Bill also has provisions for minimum conditions of work, including an eight hours work day with half an hour break, overtime at rate of twice his ordinary rate of wages; and payment of wages at prescribed rates not less than the Statutory Minimum Wages. No separate dispute resolution mechanism was been provided in the Draft Bill.

3.12 Another comprehensive legislation for regulation of employment, conditions of service, and provision of welfare measures of agricultural workers has been made in a private member's Bill (Hannan Mollah 2001). The definition, coverage and the main provisions of the Bill are broadly similar to the MOLE Bill (1997). It, however, proposes a system of enforcement by inspectors and a two tier dispute resolution structure consisting of the conciliation machinery and an agricultural tribunal.

3.13 Two Bills proposing comprehensive legislation for regulation of employment and conditions of service, social security and welfare of unorganized sector workers have also been proposed by National Centre for Labour and the National Campaign Committee for Unorganised Sector Workers in 2005. The Bills cover wage workers, home-based and out-workers duly registered under the Act but do not include

agricultural, plantation, sericulture, horticulture, poultry farming, animal husbandry workers and other allied workers and the persons employed in factories and mines. The Bills provide for the right to livelihood including the right over common properties and natural resources. They also include provisions for regulation of working conditions, provide for continuity of employment, bonus and social security, non-discrimination, and provisions against harassment of women workers. They also provide for the right to have a uniform social security card; occupational and other safety measures; vocational training and guidance, and ensuring special protection for migrant workers. The tri-partite Boards formed under the proposed Act will be responsible for its administration. Enforcement will be through a system of inspections and trade unions will be vested with powers of inspectors. For dispute resolution, the Bill provides for Dispute Resolution Councils and appellate authorities.

3.14 The comprehensive Bill formulated by the Ministry of Labour and Employment, was forwarded to this Commission for review and comments. The National Advisory Council of the government formulated a stand alone Bill on social security for unorganised sector workers which was also forwarded to this Commission for review. The Commission deliberated on the issues of social security, conditions of work and livelihoods, and prepared two separate Draft Bills on social security and conditions of work which were circulated for feedback.

3.15 These Bills, along with the Bills prepared earlier by the Ministry of Labour and the National Advisory Council were considered in the 40th Indian Labour Conference, which is the main tri-partite consultative forum, in its meeting held in December 2005. The Conference suggested that the NCEUS Draft Bill be used as a basis for further discussions. It, however, suggested that social security and conditions of work be integrated in the same Bill and that separate Bills be formulated for agricultural and non-agricultural workers.

3.16 The Commission considered the views of the ILC, along with the views and feedback from other stake holders and the States and in May 2006, the Commission finalised its report on social security and its recommendations on a Bill and a National Social Security Scheme to which all unorganised workers would be eligible within a period of five years. It may be noted that the Commission submitted a stand alone proposal on social security at this stage because it was considered that such a proposal would be institutionally feasible and implementation could begin within a short period of time.

3.17 The Commission's proposal on social security has been considered by the Ministry of Labour and Employment and by the Cabinet. The views of the Ministry and the government have been summarised in the Ministry's report to the 41st ILC held in April 2007.

4. Comprehensive Legislations for Regulation of Minimum Conditions of Work, Social Security and Welfare of Agricultural and Non-agricultural Workers

4.1 The preceding discussion indicates that there has been a growing consensus on the need for a comprehensive legislation. There is also some agreement among the stake holders that the new law needs to have a different implementation mechanism involving tripartite regulatory bodies and having inbuilt systems of self-regulation. There is also some consensus that the needs of the agricultural and non-agricultural workers with regard to their working conditions are very different and that the new proposed bill should address the needs of agricultural and non-agricultural workers separately either within the same bill or in two distinct bills one each for agriculture and non-agricultural sectors.

4.2 The Commission has examined these proposals in the light of its own findings on the condition of unorganised sector workers, and its analysis of the existing state of regulation of conditions of work, as well as protection and promotion of livelihood of the workers in the sector as a whole. It is noted that the existing proposals differ in scope, coverage and institutional mechanisms. The general scope of these proposals extends to working conditions, social security and welfare, and protection and promotion of livelihoods. The coverage of these proposals varies in as much as some of them are confined only to agricultural wage workers, while some cover both wage and self-employed workers in the non-agricultural unorganised sector only, and some encompass all workers in both the agricultural and non-agricultural sectors. Further, the coverage may also be confined to listed schedules of employment.

4.3 The Commission concurs with the need for a comprehensive legislation for the unorganised sector. With regard to social security, the Commission has already recommended a **National Minimum Social Security Scheme** for all unorganised sector workers, which can be added upon by the states, and has suggested a Draft legislation. Issues contained therein are already under consideration of government. The Commission therefore proposed a legislative framework to ensure minimum conditions of work for all unorganised workers, with special attention being paid to the special needs of vulnerable sections of the unorganised workers (women, migrants, and homeworkers). However, given the differences between agricultural and non-agricultural workers, the Commission recommended two separate Bills (for the agricultural and non-agricultural workers). Part 1 of these Bills related to conditions of work. The Commission also made recommendations with respect to the aspect of livelihood promotion in Part 2 of the Bills. **These two Draft Bills were publicised by the Commission in February 2007, and a series of state level, regional and national consultations were held with all stake holders on the contents of these Bills.** In particular, two national consultations were held with Central Trade Unions and other national organisations representing unorganised sector workers. A number of views

emerged in these consultations which have been helpful in finalising these Bills. Views received by the Commission have also been appended to this Report.

4.4 Two main views emerged, however, which had a bearing on the structure of the Draft Bills as prepared by the Commission in February 2007. First, it was argued by the trade unions and national organisations that, although they welcomed the Commission's proposals, the Indian Labour Conference (40th Session) had resolved for composite Bills incorporating both social security and conditions or work proposals. **Second,** a number of responses stated that the Commission's proposals on livelihood promotion could be dealt more appropriately through recommendation of policies or programmes, rather than through legislation.

4.5 The Commission deliberated at length on these two issues. With respect to the first issue, while the Commission could have left it to government to synthesise the two proposals if it so desired, the Commission felt that it could also itself combine its earlier proposal on social security with those on conditions of work in the two separate Bills for agricultural and non-agricultural workers. As far as the government was concerned, nothing would be altered as far as the social security proposals of the NCEUS were concerned. **But the synthesised Bills would be in line with the Tri-partite conclusions and would, therefore, have greater acceptability among the stake holders. Further, it was felt, that since the UPA government had clearly committed itself to a comprehensive protective legislation for agricultural workers in its Common Minimum Programme, the new synthesised Draft Bill for agricultural workers would also be more in line with this commitment.** For these reasons, the legislative content of the social security proposals have been incorporated in the two final Bills.

4.6 As regard the second issue, the Commission has given some responsibility for welfare and livelihood promotion to the Social Security and Welfare Boards proposed in the final draft of the Bills. However, the principal recommendations of the Commission with respect to livelihood promotion are now being suggested outside of the proposed legislative framework. They will form part of the detailed Report on Conditions of Work and Livelihood Promotion and will also be submitted to government in the form of an Action Plan.

5. Need for Separate Bills for Agricultural Workers and Non-Agricultural Wage Workers

5.1 The Commission has proposed two draft Bills regarding the conditions of work and social security. These are the **Agricultural Workers Conditions of Work and Social Security Bill, 2007** (hereafter referred to as NAWB), and the **Unorganised Non-Agricultural Workers Conditions of Work and Social Security Bill, 2007** (hereafter referred to as AWB). The first Bill is applicable to the unorganised agricultural workers (all agricultural wage workers excluding those eligible for protection under the Plantation Workers Act, and all marginal and small farmers). The second Bill is applicable to the unorganised non-agricultural workers i.e. non-agricultural workers in the unorganised sector as well as unorganised workers in the organised sector who are not protected by

existing laws applicable to that sector, subject to an income ceiling. Although most of the conditions of work specified under the Agricultural Workers Bill and the Unorganised Non-agricultural Workers Bill are similar, the two separate Bills have been provided to take care of specific issues being faced by the two different sets of workers. The working conditions differ and separate sets of conditions have been proposed wherever considered necessary.

5.2 Further, in some States like Tamil Nadu, the present machinery for enforcement of labour laws for agricultural and non agricultural workers is different. The laws relating to non agricultural workers are enforced by the Labour Department whereas for non agricultural workers enforcement is carried out by the Revenue Department or by another separate machinery. For this reason, the two Bills prescribe different provisions for the dispute resolution machinery in the agricultural and non-agricultural sectors.

5.3 As discussed above, each of the Bills incorporate provisions for regulation of conditions of work and social security. Chapter II of the Bills deals with conditions of work of the unorganised non agricultural and agricultural workers respectively. Chapters III to VIII of the Bills relate to Social Security, Constitution of the Social Security Funds, Constitution, Powers and Functions of the National and State Social Security and Welfare Boards; provision for registration and implementation of the Scheme. The provisions with respect to the National Social Security Scheme, the National Social Security Fund and the National Social Security and Welfare Boards are identical in the two Bills and are based on the earlier proposals of the Commission to the government.

The Dispute Resolution mechanism for settlement of disputes arising due to non observance of provisions relating to conditions of work are specified in Chapter IX of the respective Acts.

5.4 Some of the main recommendations (covered by the Bills) are discussed below. We also discuss those recommendations which are not part of the proposed Bills.

6. Main Recommendations Relating to Conditions of Work

6.1 The Commission is aware that there are a number of laws which are partly applicable to the unorganised workers. However their domain is restricted either in terms of coverage of the unorganised workers or in terms of benefits provided by those laws. Hence, the Commission has provided a framework providing for minimum conditions of work to all unorganised workers. The proposed law will, however, not affect the application of any other State or Central Acts which apply to the unorganised worker, and if under any existing law, any unorganised agricultural non-agricultural worker is eligible for superior or better benefits, he shall

continue to be entitled for such superior benefits provided under those Acts. Further, as the entitlements as provided for in the act are bare minimum, an wage worker can enter into an agreement with his/her employer for granting him/her rights or privileges in respect of any matter which are more favourable to him/ her than those to which he/she would be entitled under this Act.^[1]

6.2 The conditions of work which are prescribed both for agricultural and non agricultural unorganised wage workers include an eight-hour working day with at least half-hour break, one paid day of rest, a national minimum wage for employments not notified under the Minimum Wages Act of states, piece-rate wages to equal time-rated wages, employments specifically done by women to be brought on par with employment certified as equivalent, due payment of wages in time failure of which would attract penal interest, no deduction of wages in the form of fines, right to organise, non-discrimination on the basis of gender, social origin, incidence of HIV AIDS and place or origin; adequate safety equipment to be provided, compensation for accident, protection from sexual harassment, provision of child care; provision of basic amenities at the workplace etc.^[2]

National Minimum Wage

6.3 The Constitution of India envisages a just and humane society and accordingly gives place to the concept of living wage in the chapter on Directive Principles of State

Policy. Wages in the organized sector are determined through negotiations and settlements between employer and employees. In the unorganised sector, where labour is vulnerable to exploitation due to illiteracy and having no effective bargaining power, the wages can not be left to be determined entirely by the interplay of market forces and, therefore, intervention of the Government becomes necessary both from the perspective of social justice, and also for increasing efficiency and productivity in the economy.

6.4 On the recommendation of the Eighth Standing Labour Committee, the Minimum Wages Bill was introduced in the Central Legislative Assembly in April 1946 and the Act came into force in 1948. Under the Act both State and Central Government are “Appropriate Governments” for fixation revision of minimum rates of wages for employments covered by the Schedule to the Act. The schedule is in two parts, part II of the schedule applicable to the employment in agriculture. The appropriate government has notified the list of scheduled employment in part I and part II. At present some employments are not added in the schedule and the benefits under the Minimum Wages Act are not applicable to the workers working in such employments.

6.5 The appropriate government fix the minimum rates of wages payable to employees employed in an employment either specified in part I and Part II of the schedule, or added to either part by notification under section 27, and review these wages at intervals not exceeding five years. In fixing or revising minimum rates of wages, the appropriate government can appoint as many committees and sub committees as it considered necessary.

6.6 **In absence of any attempt to define the concept of minimum wages the principles and components decided in cases of minimum wage fixation differ at both Central and State levels and the concerned Advisory Boards use discretion and their judgment in the absence of a standard set of criteria.** This absence of a uniform set of criteria has been sought to be filled later on by various attempts which did not prove very useful because of several shortcomings and constraints.

Principles of Fixation of Minimum Wage and the Concept of National Minimum Wage

6.7 Minimum wages depend upon the set of minimum needs of the worker and her family that should be met out of wage earnings and the capacity to pay of a particular industry. In general, there must be an irreducible ‘minimum’ which must correspond to a basic subsistence which minimum wages must meet. The Judgment of the Supreme Court of India in the Case – Crown Aluminium vs. Workmen, mentions a bare subsistence or minimum wage and stresses that any employer who pays wages below this minimum would have no right to conduct his enterprise on such terms.

6.8 Since the factors that could go into the determination of minimum wage could vary depending upon the economic circumstances of industry/country, a clearer elucidation

is needed of these factors. In December, 1947 the Government of India appointed a Central Advisory Council for advising on the issues of fair wage to labour and fair return on capital. This Council appointed a high powered tripartite committee called the Committee on Fair Wages which was asked “to determine the principles on which fair wages should be based and to suggest the line on which these principles should be applied”. The Committee, in its report submitted in 1948, drew a distinction between ‘minimum wage’, ‘fair wage’ and ‘living wage’. ‘Minimum wage’ according to the Committee should provide for the maintenance of the efficiency of the worker as well as his other (current) basic needs. The three concepts were elucidated by the Committee as follows:

- **Living Wage** should enable the wage earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but also a measure of frugal comfort including education of children, protection against ill health, requirements of social needs and a measure of insurance against the more important contingencies like old age.
- **Minimum Wage** must provide not merely for the bare sustenance of life but for preservation of the efficiency of the worker. For this purpose the minimum wage must also provide for some measure of education, medical requirements and amenities.
- **Fair Wage:** while lower limit of the fair wage must obviously be the minimum wage, the upper limit is equally set by what may broadly be called the capacity of the industry to pay.

6.9 In 1957 the 15th Session of Indian Labour Conference (ILC) emphasized that minimum wage should be need-based in order to ensure minimum human needs of the industrial workers. The following 5 norms were recommended by ILC which till date are generally taken as the basis for fixation of minimum rates of wages: -

- (i) Three consumption units for one earner;
- (ii) Minimum food requirement for 2700 calories per average Indian adult;
- (iii) 18 yards of per capita cloth consumption for 4 members i.e. 72 yards per annum per family;
- (iv) Rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme, and
- (v) Fuel, lighting and other ‘miscellaneous’ items of expenditure to constitute 20 per cent of the total minimum wages.

6.10 These norms were to be followed by all wage-fixing authorities in India. In cases where the minimum wage fixed fell short of the above level recommended by the ILC it

was incumbent on the concerned authorities to justify the circumstances which prevented them from pursuing the above norms.

6.11The Supreme Court of India delivered a Judgement in 1992 in the case of Reptakos Brett and Co. vs. its workmen that “Children education, medical requirement, minimum recreation including festival/ceremonies and provision for old age, marriage, etc., should further constitute 25 per cent of the total minimum wage and used as a guideline in determining minimum wage.

6.12The First National Commission Labour (1969) stated clearly that while determining need-based minimum wages the employer’s capacity to pay should be considered. The FNCL did not make any attempt to define minimum wage. The FNCL remarked that though national minimum in the sense of a uniform monetary recommendation for the country as a whole was neither feasible nor desirable it was possible and necessary to fix regional minima for different homogeneous regions in each State.

6.13The Third Central Pay Commission (1970-73) broadly accepted the ILC norms for minimum wage fixation but reviewed the minimum necessary nutritional standard in order to prepare its diet schedule as the basis for expenditure estimates at January 1973 prices. Thus, the Commission recommended a minimum wage of Rs. 196 per month for the lowest category of Central Government employees.

6.14The question of a national minimum wage engaged the attention of the Committee on Wage Policy (1973) appointed by Planning Commission. This Committee headed by Prof. S. Chakraborty, the then Member, Planning Commission, recommended national minimum wage as also general minimum wage Centre-wise and region-wise. The Committee observed, “Rs. 40 at the October, 1972 prices as the national minimum”. The Study Group on Wages, Incomes and Prices (1978), chaired by S. Bhootalingam, after carrying out an elaborate exercise, recommended a monthly wage of Rs. 100/- per month (at 1978 prices as) as national minimum, to be gradually raised to Rs. 150/- per month (at 1978 prices).

6.15The 31st session of the Labour Ministers’ Conference held in July, 1980 stressed that minimum wages should not be prescribed below the poverty line worked out by the Planning Commission and wherever the existing wages are below this line they should be brought at par with the poverty line.

6.16The Committee of Secretaries, in its meeting held in July, 1981 noted that in view of the numerous spatial and characteristic diversities of various employments and their locations in our large country, the fixation and implementation of minimum wages have to overcome a lot of conceptual problems and operational constraints. The Committee suggested a duality of minimum wages: an absolute minimum called the ‘National Floor Level’ should be applicable to those employments which have not been included in the Schedule of the Act, while the other, pegged at higher level (i.e. higher than the National Floor Level). The idea of a National Floor Level was conceived as a statutory rock-bottom below which the minimum wages cannot be legally allowed to fall in any

employment anywhere in India. But there should be no bar to the fixation of minimum wages above this floor level wherever it would be possible to peg it up.

6.17A similar concept was mooted by another Committee of Secretaries of six States (viz. Bihar, Kerala, Manipur, Uttar Pradesh, West Bengal and Pondicherry) constituted in 1981 on the recommendations of the Sub-committee of the Labour Ministers' Standing Committee. This Committee introduced another new concept of 'general minimum wage' which was defined as the lowest wage essential to meet the bare minimum needs of workers and their families. The general minimum wage envisaged the statutory bottom level below which wage rate in any schedule employment is not legally permitted to fall; but according to the Committee there should be no bar to the fixing of minimum wage above this general minimum in cases where concerned employment with a better financial health might be capable of paying higher wages.

6.18The India Labour Conference in its meeting held in November 1985, expressed the view that till such time as a national wage was not feasible, it would be desirable to have regional minimum wages in regard to which Central Government may lay down the guidelines. The minimum wages should be revised at regular periodicity and should be linked with rise in the cost of living. Accordingly, the Government issued guidelines in July, 1987 for setting up of Regional Minimum Wages Advisory Committees. These Committees, renamed subsequently as Regional Labour Ministers' Conference, made a number of recommendations which include reduction in disparities in minimum wages of different States of a region, setting up of Inter-State Co-ordination Council, consultation with neighbouring States while fixing / revising minimum wages, etc.

6.19The National Commission on Rural Labour (1991) defined minimum wage as a minimum subsistence wage, which must be paid to workers by all employers on socio-economic considerations. If the worker was paid below the minimum wage his efficiency would suffer and as a result productivity would decline. Minimum wage, being the subsistence wage, cannot differ much in physical terms from employment to employment and from employer to employer. Taking into account the poverty line as determined by the Planning Commission, the average number of earners in an agricultural labour household, the average number of employment days, and three consumption units per earner, the NCRL determined Rs. 20 as being the minimum wage in rural India in 1990-91. Following the principles enunciated by the NCRL, the Central Government raised the national floor level minimum wage to Rs.40 per day in 1998 and further to Rs.45 from December 1, 1999 and Rs.50 per day from September 1, 2002 keeping in view the rise in consumer price index.

6.20The Second National Commission on Labour (2002) also considered the issue of minimum wage and recommended a National Minimum Wage based on the principles recommended by the 15th ILC. The SNCL recommended that the wage be revised from time to time and have a component of dearness allowance linked to the cost of living so that it could be adjusted every six months. The wage itself could be revised every five years and states could notify the minimum wage, which could vary from region to region, but could not be less than the National Minimum Wage. The SNCL

recommended that wages not be fixed separately for each scheduled employment as is presently the case.

6.21 In 2003, the Central Advisory Board, expressing concern at the wide disparity in minimum wages that existed and the lack of clarity on the concept, norms and parameters of wage fixation, constituted a Working Group to go into these issues. The Working Group submitted its report in 2003.

6.22 The Working Group decided to adopt the principles laid down by the ILC of 1957 and elaborated by the Supreme Court judgment of 1992. Accordingly, it took a minimum calorie norm of 2700 calorie per consumption unit, 3 consumption units per earner and the actual estimated wage employment days for agricultural labourers. The Group, then used the NSS 50th Round survey data on consumption expenditure to fix the average consumption expenditure which would yield a consumption of 2700 calories per consumption unit. It found that this expenditure level covered adequate non-food expenditure (as per norm). Working backward, it determined Rs. 66 to be the National Minimum Wage as in 2002-03. The Committee recommended that this wage could replace the different state level minimum wages for different schedules of employment. With effect from February, 2004, all the States/UTs Governments have been requested by the Labour Minister to ensure fixation/revision of minimum rates of wages in all the scheduled employments at not below Rs.66 per day. However, there is no legal backup to the national floor level minimum wage fixed by the Government of India.

6.23 From the review of the existing analysis and recommendations on the subject of minimum wage, it is clear that it has been felt throughout that a minimum wage linked to the core subsistence needs of the workers should be available to all workers. It is further clear that the existing wide variation in the minimum wages have been a matter of concern to most committees/commissions. With regard to the issue whether a single minimum wage should be available to all workers, or should form the floor only, there is some difference of opinion.

6.24 **This Commission has taken the view there should be a statutory national minimum wage which shall represent the lowest level of wage for any employment in the country.** This wage shall be applicable to all employments presently not covered under the Minimum Wages Act of the State concerned, and would be applicable to both wage workers and home workers. Even with respect to the employments covered under the Minimum Wages Act, the State Government has to ensure that the Minimum Wage fixed under the Minimum Wages Act, is not lower than the National Minimum wage. In case, the prescribed minimum wage under the Minimum Wages Act is lower than the National Minimum Wage, the State Government shall immediately amend the prescribed minimum wage, to bring it in conformity with the National Minimum Wage. Even during the intervening period, till the time the State Government has not amended the prescribed wage under the minimum wages Act, the worker shall not suffer and shall be eligible to receive the higher National Minimum Wage. ^[3]

6.25 The National Minimum Wage shall be fixed by the Central government which shall follow a tri-partite consultative process, and will be announced within one year. The general principles in the fixation of the National Minimum Wage will be the minimum basic needs of the wage and home workers and his/her family. It is seen that the cost of living among different states, districts or even between the rural areas and urban areas within one district vary considerably. The government shall consider all such factors or any other relevant parameters for fixation of National Minimum Wage.^[4] However, the Commission has also examined and elaborated on the relevant principles in 6.27 below.

6.26 The Commission finds that several committees have adopted a normative approach to define subsistence needs and minimum wage. The Indian Labour Conference had, in 1957, decided five norms, to which the Supreme Court judgment of 1992 added a sixth. The 30th Session of the Labour Ministers Conference in 1980 and NCRL in its Report in 1991, however, adopted an approach which was more grounded in the notion of 'poverty line' as determined by the Planning Commission. Its needs to be mentioned that the ILC norms, were set half a century ago, when the debate on minimum nutritional norms was in its infancy. Further, even if these norms were fully valid 50 years ago, they need to be redefined in the present context. In any case, the basic challenge has been to convert the basic norms into monetary value since this can be done in a number of alternative ways.

6.27 Since 1993, the Government of India has adopted a definition of 'poverty line' which is benchmarked to the consumption of a minimum amount of calories (2400 Kcals in rural areas, and 2100 Kcals in urban areas) on a per capita basis in 1973-74, and non-food expenditure by the expenditure class consuming these calories. The poverty line has provided an inter-state and inter-temporal basis for interpreting minimum subsistence. It has also provided a fulcrum for policy decisions. The poverty line is adjusted according to the cost of living in rural and urban areas and in different states. These parameters were not available before 1993 but, despite a considerable degree of debate, have acquired wide acceptability as a notion of subsistence since then. It will be recalled that the poverty line includes expenditure on food and non-food items, including clothing, fuel, education, health care, housing etc. In other words, the poverty line is set at a level where it can cover the very basic requirements of a family, and except for old age security, includes some expenditure on the items mentioned by the ILC as well as the Supreme Court judgment. However, given the level of capability deprivation faced by the poor in India, it may be argued that the poverty line does not allow the minimum level of expenditure on some of the basic items such as education, health, and housing.. A perusal of National Sample Survey data shows that, even as a proportion of their own consumption expenditure, the poor spend about eight per cent less than the average on the three items mentioned above. Similarly, there may be other items in the poor's consumption which reflect the deprivation which the poor continue to face, which are not included in the poverty line. It is for similar reasons that the Supreme Court had suggested a 25 per cent increase over the basic expenditure level on the norms suggested by ILC. The Commission is of the view that the poverty line reflects the subsistence in the current context which the ILC and other bodies have attempted to

define through norms. However, this subsistence needs to be adjusted upwards to take care of the deprivation, particularly the capability deprivation that the poor continue to face. Since the items mentioned in the Supreme Court judgment are already included in the consumption basket which constitutes the poverty line, a smaller mark-up over this level may be necessary to represent the expenditure to be met through minimum wage income. On this basis, the Commission recommends that the following parameters could be taken into account in determining the National Minimum Wage:

- (a) The Monthly Per Capita Consumption Expenditure (MPCE) corresponding to the poverty line as determined by the Planning Commission;
- (b) A mark-up over this expenditure to take account of the capability deprivation of poor households.
- (c) The average size of labour households, as shown in surveys
- (d) The average dependent-earner ratio in labour households
- (e) The total average number of total days of employment for labourers as brought out by the National Sample Survey
- (f) The National Minimum Wage could be fixed for the country as a whole, on the basis of the above parameters, and the same could be adjusted for rural and urban areas and different states, as is done for estimating poverty lines at present.

These parameters can be objectively determined on the basis of the National Sample Surveys on Consumption, and on Employment-Unemployment. Such a methodology could be considered by the government in fixing and announcing the National Minimum Wage.

6.28 The fixation of National Minimum Wage by the government shall be done within one year of the implementation of the Act. Thereafter, the National Minimum Wage shall be periodically reviewed by the Central Government through a modality prescribed by the National Board for Social Security and Welfare for Unorganised Workers.^[5] Till such time as the government fixes and announces the new National Minimum Wage, the National Minimum Wage fixed by the Labour Ministry shall, after adjustment for cost of living changes, be deemed to be the National Minimum Wage under this Act.

6.29 It would be noted that the Commission has not advocated the abolition of the different schedules of the state level minimum wages. This is because the variation in circumstances between employments and/or states or locations may warrant a higher wage. However, there may be cases where the states may like to merge some employments and simplify existing schedules. At the same time, the Commission is concerned that there are no clear guidelines regarding the fixation of Minimum Wages under the Minimum Wages Act, and this leads to considerable arbitrariness. It has

therefore been proposed that the State Boards being constituted can go into these questions and can formulate appropriate guidelines for fixation of wages under the Minimum Wages Act.^[6]

Other Issues relating to Wages

6.30 The Commission has analysed other aspects of payment of wages to unorganised sector workers. There are cases of delayed payments both for wage workers and home workers. We have, therefore, provided that the wages of workers shall be paid for the periods agreed upon by the employer and the worker which can in no case exceed one month. If there is any delay in payment of wages beyond one month, then the employer shall be liable to pay penal interest to the worker.^[7] The Commission is aware of the lack of voice of workers in this sector and therefore the limitations in applicability of this suggestion. However a beginning needs to be made in this direction.

6.31 Due to non availability of regular jobs the workers in the unorganised sector do not have enough bargaining power *vis a vis* the employers. The employers use all possible means and forms to squeeze the quantum of wages paid to a worker under some pretext or other. There are no rules to control or monitor the deductions from wages. The deductions may be on account of advance to the worker, in the form of interest, payments to contractors or agents, overvaluation of goods supplied or basic amenities including accommodation in the case of seasonal migrant workers, fines, inadequate or poor quality output. These kind of deductions are most rampant in the case of seasonal migrant workers who take advances from their employers/contractors, and in the case of home workers. The Commission recommends that no deductions on these account be made, except in accordance with rules made in this behalf by the State Government. This provision is incorporated in the two Bills proposed by the Commission.^[8]

6.32 The Minimum Wage Act provides for equivalence of wages between the time rated minimum wages and the piece rated wages. Where the wages of a wage worker or home worker are determined by a piece rate system, the earnings of a worker working for 8 hours on piece rate system under normal work intensity, should be at least equal to the time rated minimum wages fixed for that category of work in the state concerned.^[9] Thus this would bring parity between the time rated wage worker and a piece rated wage worker. There may be certain employments where Minimum wages have not been fixed under the Minimum Wages Act. In such cases the comparison and parity of piece rated work should be with the National Minimum Wage.

Women Workers

6.33 We have shown that women workers in the unorganised sector, suffer from a number of handicaps. The Equal Remuneration Act applies to the

unorganised sector and has the object of ensuring that men and women receive equal remuneration for equal work. However, one of the reasons that this does not happen is that men and women are often segmented in different activities and activities in which women predominate are valued poorly, even in cases where work may be arduous or may require high skills. This Commission recommends that an Employment Certification Committee be formed which will periodically evaluate employments in the state and bring on par with the wages in employments performed predominantly by women with employments certified as equivalent in value. This is in order to bring the wages of women on par with equivalent employment elsewhere. Employment Certification Committee to The National Commission for Self-employed Women Workers had also made a similar recommendation.^[10]

6.34 Further, to facilitate the working of the women workers the Commission is of the view that there should be adequate child care facility for which the State Board for Promotion of Livelihood of Unorganised Sector Workers shall make rules to be made available at local levels.

6.35 One of the issues with respect to women workers is that they are vulnerable to sexual harassment. It is fundamentally the responsibility of employers to ensure that women workers are treated with dignity and that this does not happen.^[11] However, the Commission also recommends the creation of a Complaints Committee at the district level and sub-district level, within the structure of the Dispute Resolution Council and the Conciliation Committees to deal with complaints concerning sexual harassment of women at the workplace. This is in line with the Supreme Court Judgement in the *Vishaka and Others vs. State of Rajasthan and others* case.^[12]

Home workers

6.36 We have shown that homeworkers constitute an important segment of self-employed home-based workers, especially among women workers. The conditions of work of such workers are less amenable to regulation because their relationship to their employers is indirect. Employers sometimes choose to outsource work to homeworkers precisely for this reason. It is thus extremely vital that the condition of work of the homeworkers is brought under the ambit of regulation, even after recognising the difficulties inherent in this task.

6.37 We have already discussed four issues relating to delayed payments, deductions in payments, non-equivalence of piece rates and time rates, and the valuation of work which affects home workers.

6.38 The homeworkers generally provide for her tool, equipment or uses part of her own dwelling for the work purposes for which she/he gets no separate compensation. In effect, the wage paid to the home worker is less as compared to his counterparts who do the same work at the employers' premises with the aid of tool, equipment and place of work provided by the employer. Thus, for equity the Commission feels that they

should be separately compensated at such percentages as may be decided by the State Government.^[13]

6.39 It should be noted that the conditions of work of the homeworkers are inseparable from their conditions of living. This calls for a role for promotional policy which can assist such workers both by providing them with work sheds and common facilities, but also in making provision for better housing and basic facilities.

Migrant Workers

6.40 Migrant workers, especially seasonal migrants, suffer from a number of handicaps, including very poor working and living conditions. In mines, quarries, brick kilns etc. where the system of contractor based recruitments is predominant, these workers are recruited against advances, and adjustments are made against their wages, which often include contractor's commission, overcharging for provisions and interest rate. The Commission recommends that these adjustments be declared as illegal and be made subject to the dispute resolution mechanism proposed in the Bills.^[14]

6.41 The migrant workers contribute significantly to the rural and urban economies and still their various vulnerabilities and deprivations are not factored in the planning process. The Commission has proposed that promotional policies of the state ensure that migrant workers receive their due entitlement and that their basic needs are factored in the regional planning processes.

Disadvantaged workers

6.42 Workers belonging to the socially deprived groups and women usually form the core of disadvantaged workers employed as bonded labour, child labour, seasonal migrants, or suffering from various forms of social exclusion and discrimination. The National Commission for Self-employed Women and Women Workers in the Informal Sector and, more recently, the Prime Minister's High Level Committee on Muslim Minorities have recommended the constitution of an Equal Opportunities Commission to deal with broader aspects of discrimination and social exclusion (GOI 2006).

6.43 In the sphere of work, the Equal Remuneration Act protects workers against discrimination in wage payments. The proposal made by the Commission on the Certification Committee is aimed at protecting women workers against subtler forms of wage discrimination linked to segmentation of labour markets. The Commission has put discrimination on the basis of sex, caste, religion, incidence of HIV-AIDS, migration status, and place of origin in employment, wage rates and conditions of work within the purview of the proposed legislations.^[15]

6.44 With regard to **child labourers**, the Commission has examined their position in the Report. Although the percentage as child workers in the workforce appears to be

declining, a large number of children are still engaged in full time work as wage labourers. The sectors in which children can be found to be working are both those sectors where child labour is now prohibited as the work is deemed to be hazardous as well as other sectors where child work is presently not prohibited. In the Report, we have pointed out that as a result of increasing awareness and the impact of promotional policies, mainly the expansion of elementary education, child labour has declined in both prohibited and non-prohibited sectors. However, new sources of the demand of child wage labour are also rising which causes children from vulnerable households to be pushed into the labour force. The Commission is of the view that there is considerable urgency to regulate and check this trend. Further, we are of the view that instead of only relying on Part II of the Child Labour (Prohibition and Regulation) Act, 1986, suitable amendments should be made to Part III of the Act (Regulation of Conditions of Work of Children), so that (i) it would be punishable to employ any child under the age of 11 years; (ii) no child between the age of 11 and up to 14 years can be employed in any occupation during school sessions; and otherwise for more than 4 hours.

Availability of records

6.45 The Commission has considered the issue of record keeping as a method of verifying the terms and condition of employment of the workers. A proportion of the small employers in the unorganised non-agricultural sector and a sizeable proportion in the agricultural sector are illiterate. Besides, the process of record keeping can be quite cumbersome for such employers. At the same time, the Minimum Wage Acts and the Shop and Establishment Acts already prescribe some record keeping. In agriculture, however, many states provide exemptions to certain categories of employers. The Commission is in favour of according some degree of formality to the informal labour markets within pragmatic limits. We therefore recommend that employers of regular workers in the non-agricultural workers be required to provide, in writing, the terms and condition of employment to the workers.^[16] In all cases of non-agricultural employment, including in the case of casual workers, wage slips may be provided.^[17] This is, however, not feasible in the agricultural sector, where we do recommend that regular workers be provided a record of their terms and conditions of employment. The Bills that the Commission has proposed put the onus of proof on employers, and they might, therefore, keep such records as might be necessary in verifying their claims of payment.^[18]

Compensation in the case of injury

6.46 The wide variety of employment and the various categories of work in the unorganised sector entails variety of hazards and risks. The employer should provide the unorganised wage or homemaker with adequate safety equipment while handling hazardous substances and equipments.^[19]

6.47 Further if there is any accident or occupational hazard arising out of or in the course of employment that results in any temporary, permanent, partial or total disablement of the wage worker the employer shall compensate the wage or home worker for it, which shall not be lower than the benefits provided under the National Social Security Scheme, being recommended by the Commission.^[20] The Commission further suggests that where the wage worker is covered under the National Social Security Scheme, the employer shall not be pay such compensation. This shall act as an incentive for the employers to get their employees registered under the Scheme.

Implementation of Regulation of Conditions of Work and Dispute Resolution

6.48 Although the Commission has recommended comprehensive legislation of regulation of conditions of work in the unorganised agricultural and non-agricultural sectors, the factors which will constrain the effectiveness with which the proposed legislations are likely to be implemented will be similar to those which affect the functioning of the existing laws.

6.49 The large scale violation of the existing laws such as the Minimum wage Acts is indicative of the lack of knowledge on the part of the workers and the employers and the lack of willingness on the part of the employers to enforce the existing regulations. It is important that the government carries out a large scale education programme aimed at the workers, the employers and other stake holders aimed at inculcating the importance of assuring the workers a basic dignity and minimum conditions of work. The National and State Boards proposed by the Commission should also play a part in this campaign.

6.50 Another set of constraints on the implementation of laws for the unorganised sector springs from the large and dispersed nature of such employments, the limited outreach of the existing labour departments, the focus of the conciliation machinery on the organised sector, and the lack of infrastructure with the implementation departments. We propose that steps be taken to improve the infrastructure of the department, focus on increasing its efficiency and education and sensitisation programme of its officials.

6.51 Perhaps the biggest constraint arises from the lack of voice of the unorganised workers and their weak bargaining power. These problems can only be corrected through concerted efforts at strengthening the bargaining capacity of these workers. One of the ways in which this can be done is by giving their representatives a representation in dispute resolution mechanisms and by giving them the authority to raise issues as disputes^[21].

6.52 The Commission has recommended the constitution of Conciliation Committees and Dispute Resolution Councils for both agricultural and non-agricultural workers respectively which are tri-partite in character. In each of the Bills, the Commission has

proposed that the State Government will constitute Dispute Resolution Councils (DRC) at district level and Conciliation Committees (CC) at an appropriate level below the district level, i.e. Block/Tehsil/Mandal, level, for resolution of disputes relating to the non observance of provisions of the Acts arising amongst the unorganised wage workers/home workers and employers.. The Composition of the DRCs and CCs will be tri-partite in character and will consist of representatives of employers, workers and an Officer designated by the State Government to be the member secretary^[22].

6.53The primary focus of the proposed dispute resolution machinery will be on conciliation. The Conciliation Committee shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters connected therewith or require the matters to be investigated by the Labour Inspectors under this Act, and may do all such things as they think fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute^[23]. In case of failure of conciliation, the DRC shall record its finding and refer the matter directly to an Adjudicator, within 4 weeks of the reference of the dispute^[24]. The proposal provides that the State Government shall also issue such notifications and directions as are necessary to ensure that the adjudication proceedings are concluded expeditiously with minimum loss of time and costs to the parties involved.

6.54Where the dispute pertains to any matter covered by any law mentioned in Section 4(1), the Dispute Resolution Council shall forward the complaint to the appropriate authority created under the relevant Act for adjudication.

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7. Provisions for Social Security

7.1 The Commission has examined the issue of social security for unorganised workers in detail in its **Report on Social Security for Unorganised Workers**, submitted to the government in May 2006. The Commission had made a specific recommendation for An Act and a National Social Security Scheme for which all unorganised workers could register and be eligible to receive benefits. The Commission has recommended that the Scheme cover all eligible unorganised workers within a period of five years. These provisions are included in the present Bills in Chapter III of the Comprehensive Bills (Section 7, Clause 1 and 3). The eligibility of the workers under the scheme was to be determined subject to a ceiling on land held (two hectares) in the case of agricultural workers, or income (Rs. 6500 per month, as on 1.1. 2006, as discussed in the 40th Indian Labour Conference) , in the case of non-agricultural workers (as per Section 20 of the Bills). **The Commission's approach has been to ensure that a minimum level of social protection is seen by the workers as a statutory right and an entitlement and not simply as an ad hoc largesse bestowed by government.**

7.2 The statutory **National Social Security Scheme** which the Commission has proposed consists of a package of the following **minimum** benefits^[25]:

- i. *Hospitalization benefit for the worker and his family to the tune of Rs 15,000 per year, maternity benefit to the extent of Rs 1000 to the worker/spouse, and sickness allowance for 15 days beyond three days of hospitalization.*
- ii. *Life and disability insurance to the tune of Rs 30,000 in the event of untimely natural death of the worker; Rs. 75,000 in the event of accidental death or total disability; and Rs. 17,500 in the event of partial disability.*
- iii. *Old age cover in the form of a pension of Rs. 200 p.m. to all BPL workers above the age of 60 years, and Provident Fund for all other registered workers.*

7.3 It may be mentioned that the Commission has estimated the total financial cost of the Scheme, at 2006-07 prices, on complete implementation, to be about Rs 33.350 crores (Rs. 19.400 crores for agricultural workers and Rs 12.950 crores for non-agricultural workers), **as laid down in the Schedule to the Bills.** This

includes The Commission has recommended a *contributory* scheme, in which the poor workers are exempt from making any contribution, and other workers do not contribute more than one-third. However, in the proposed Bills, the actual pattern of financing has been left to the Central government, which can meet the financial expenditure on the Scheme through grants and loans, contributions from employers and workers, cess or tax (see Section 8 of the Bills).

Institutional Framework

7.4 The Commission had, in its *Report on Social Security for Unorganised Workers*, proposed a federal structure for implementation of the Scheme. The present Comprehensive Bills incorporate this structure with few changes. The proposed structure is described in Chapters 4 to 8 of the comprehensive Bills as well as in the Schedule to the Bills. It is proposed that the **National Board for Social Security and Welfare** will implement the scheme at the Central level, while **State Boards for Social Security and Welfare** will do the same at the State and District level^[26]. **Worker Facilitation Centres** (WFCs) which may be NGOs, trade unions, or PRIs will facilitate the scheme including the registration of workers^[27]. The actual registration of the workers as well as issue of identity cards will be the responsibility of the State Boards. Further, in the Commission's proposal, there is possibility of incorporation of existing structures and schemes at the State level as well as add-ons.

7.5 While the functions of the WFCs remain the same in this Report, we have proposed a broadening of the functions of the National and State Boards in relation to functions that we had proposed to these organisations in the 1996 Report. The functions of the **National Social Security and Welfare Board for Unorganised Workers** will include Social Security and Welfare functions, along with provisions for providing an oversight for the provisions for the regulation of the conditions of work. The Board, which is an apex institution will be common to both agricultural and non-agricultural workers. The Commission has proposed that the National Board be constituted by the Central Government and consist of stakeholders among trade unions, employers, government bodies and public agencies, experts and other non-governmental institutions dealing with the unorganised sector^[28]. The exact constitution of the Boards is set out in the Bills proposed by the Commission.

7.6 The Chairperson shall be a person of eminence appointed by the government, and an officer in the rank of the Secretary to the Government of India, shall be the full-time Member-Secretary, who shall be its Chief executive Officer^[29]. The National Board shall have a secretariat with adequate professional and other staff. The staff of the National Board for promotion of livelihood of Unorganised Workers (agricultural/non-agricultural) shall be governed by the Central Government rules and regulations existing from time to time.

7.7 A **National Social Security and Welfare Fund** would be created and would be operated by National Board (See Section 8 of the Bills). The contribution of the Central Government will be credited to the NSSF at the beginning of each year^[30]. Similarly,

State Funds would be created under the State Boards (whose functions are discussed below), to which state level sources of finances for the National Social Security Scheme as well as finances for other schemes would accrue.

7.8 The National Board will perform the following pivotal functions for the protection and promotion of the unorganised agricultural and non-agricultural sectors^[31]:

- (i) Administration of this Act and formulation of policies at the national level, and shall have such powers as may be laid down to direct, co-ordinate, supervise, and monitor the functioning of State Boards and the Central Welfare Boards;
- (ii) Review the working including auditing of the State Boards and the Central Welfare Boards every four years and make suitable recommendations to the Government(s) concerned for further improvement;
- (iii) Manage and maintain the National Social Security and Welfare Fund, provide financial assistance to State Boards; recommend new schemes and programmes and projects for implementation through the Fund;
- (iv) Advise the Central Government on policy matters relating to social security, and extension of schemes of social security such as ESI and EPF to unorganised sector workers; and health, safety and welfare of workers;
- (v) Assist in capacity building of the State Boards.
- (vi) Collect, compile and publish statistics relating to the unorganised sector and undertake such promotional activities as may be decided from time to time.
- (vii) Monitor and review the impact of existing schemes, policies and programmes of various Ministries and Departments of Government of India on the unorganised sector workers and make appropriate recommendations;
- (viii) Advise the Government regarding the promotion of gainful employment opportunities and promotion of livelihood options and matters relating to welfare of unorganised sector workers;
- (ix) Identify skill and training requirements for unorganized workers and to advise the government accordingly;
- (x) Carry out periodic surveys on the condition of work in the unorganised sector and make suitable recommendations to the government;
- (xi) Hold public hearings to entertain petitions submitted by the unorganised sector workers and make appropriate recommendations;

- (xii) Advise government on special protection measures for migrant workers and their families in providing the ration cards, housing and education to their children;
- (xiii) Provide for guidelines of periodic review of the national minimum wages fixed by the Central Government after taking into account the minimum basic needs of the wage workers and his/her family.

7.9 In consonance with the federal character, we have proposed that **State Boards for Social Security and Welfare** for Agricultural Workers and Non-Agricultural Workers be set up under the provisions of the two Bills respectively . The organisational structure of the State Boards is similar to the National Boards. The State Boards have, however, more direct responsibilities with respect to the implementation of the National Social Security Scheme. They can also frame their own schemes and undertake other welfare and livelihood promotion activities. Besides, the State Boards will also undertake specific oversight functions with respect to regulation of conditions of work. For example, they will make guidelines for fixation of minimum wages; determine the safety and health standards required to be maintained in various occupations; carry out periodic surveys of occupational health hazards; and constitute an Employment Certification Committee to bring the wages in employments performed mainly by women on par with other employments certified as equivalent in value .

7.10 Thus, it is envisaged that the National and State Boards will play a pivotal role with respect to the National Social Security Scheme, in progressively enhancing the scope of social security and welfare measures for unorganised sector workers, in monitoring the conditions of work in the sector and regulating these conditions; and in undertaking promotional measures to enhance employability and employment of the unorganised sector workers.

8. Conclusion

8.1 The purpose of this Report has been to present a rationale as well as a proposal for comprehensive protective legislations for agricultural workers and the unorganised non-agricultural workers respectively. These legislations include provisions for regulating minimum conditions of work, social security, welfare, and livelihood promotion and are appended to this report. The Recommendations of the Commission with respect to conditions of work is discussed in this Report while its recommendations on Social Security have been submitted earlier to government. The Commission's recommendations on livelihood promotion will be submitted shortly as part of its detailed **Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector..**

8.2 We have noted that although there are existing laws which provide some provision for conditions of work to certain sections of wage workers, and there are also some initiatives by the corporate sector to provide for minimum conditions of work through voluntary codes, there is no comprehensive framework which provides for basic and minimum conditions of work for wage workers and home workers. The laws that exist are also poorly implemented because of the inadequacies of the implementation machinery and the lack of voice among unorganised workers.

8.3 The Commission has therefore suggested a comprehensive regulatory framework to prescribe minimum conditions of work for all unorganised workers. Given some differences between agricultural and non-agricultural workers in the conditions of work, two separate Bills have been proposed. Instead of relying on bureaucratic implementation and costly and time consuming legal redressal procedures, the Commission has accorded priority to conciliation and has proposed the participation of workers' representatives and elected representatives of the local bodies in the conciliation and dispute resolution committees. Further, if adjudication is required, the Commission has emphasised expeditiousness and the Bill requires that the State government prescribes modalities by which this might be ensured.

8.4 The Commission had earlier proposed a stand-alone social security legislation along with its comprehensive **Report on Social Security for Unorganised Workers**. During its consultations on working conditions and livelihood promotion, the Commission has been apprised that tri-partite consultations held under the auspices of the Ministry of Labour have advocated two comprehensive legislations in which the provisions for social security are incorporated along with the provisions for regulation of conditions of work and livelihood promotion. The Commission has considered these views carefully. It has also considered the fact that its recommendations on social security are already under consideration of government. While it is still of the opinion that its social security proposals are fully viable on a stand-alone basis, it has taken the view that incorporation of its existing recommendations on social security along with its current recommendations on regulation of minimum conditions of work and livelihood promotion in the two comprehensive Bills (for agricultural and non-agricultural workers

respectively) may be helpful in building a broader consensus around these important issues. It has accordingly recommended two comprehensive Bills for agricultural and unorganised non-agricultural workers respectively, covering working conditions, welfare and livelihood promotion, and (its earlier recommendations on) social security.

8.5 In view of the fact, that a primary problem relating to the poor living and working conditions of both the self-employed and the wage employed lies in the low productivity of the unorganised enterprises, the Commission's view is that protection and promotion of livelihoods is also an integral part of any strategy which aims at improving the condition of unorganised sector workers. Further, although, while a number of promotion initiatives for the unorganised sector are available no single agency provides an overview of the problems and constraints facing this sector or is able to mobilise the necessary resources to help the sector overcome such constraints and facilitate its growth. The Commission, is therefore of the view that the appropriate governments take a number of necessary steps to protect and promote these livelihoods through appropriate policies and programmes. It is separately recommending the creation of a National Fund which can play a catalytic role in the promotion of livelihoods of the unorganised sector workers. It has also prepared an **Action Programme** which, apart from the two dimensions which are detailed here (social protection and regulation of conditions of work), includes a number of measures which, in the Commission's view, are required to be undertaken on a priority basis to expand employment and improve livelihoods and incomes of unorganised sector workers.

AGRICULTURAL WORKERS' CONDITIONS OF WORK AND SOCIAL SECURITY BILL, 2007.

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Statement of objects and reasons

The agricultural sector of the economy in India is the largest sector in terms of employment of the workforce. It consists of crop cultivation and other agricultural activities such as forestry, livestock and fishing. The workers in this sector may be broadly divided into wage workers, and farmers. Almost the entire agricultural sector (except the Plantation Sector) is unorganised i.e. it has neither any formal system of social security nor regulation of conditions of work. Hence, this Bill is intended to cover all unorganised agricultural workers, who are all agricultural wage workers not protected under the Plantations Workers Act, and marginal and small farmers. This Bill is intended to regulate the minimum conditions of work to agricultural wage workers and provide a measure of social security to agricultural wage workers and marginal and small farmers in the unorganised sector. The Bill mandates the Central and State governments to implement a package of National Minimum Social Security Scheme for which all agricultural workers would be entitled. This Bill is also intended to provide minimum conditions of work for agricultural wage workers whose minimum conditions of work are not regulated by any other legislation. It also provides a mechanism for dispute resolution for such workers.

AGRICULTURAL WORKERS' CONDITIONS OF WORK AND SOCIAL SECURITY BILL, 2007.

A
BILL

to provide for regulation of conditions of work, social security and welfare, and a dispute resolution mechanism for Agricultural workers and to provide for other matters connected therewith or incidental thereto.

BE it enacted by Parliament in the fifty-eighth year of the Republic of India as follows:-

Chapter I

PRELIMINARY

1. Short title, extent, commencement and application

(1) This Act may be called Agricultural Workers' Conditions of Work and Social Security Act, 2007.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States and different areas in a State and for different provisions of this Act, within six months from the date of the assent.

2. Definitions

For the purposes of this Act, unless the context otherwise requires, -

- a) **"Adolescent"** means a person of the age of 14 years and above and who has not completed 18 years of age.
- b) **"Agricultural worker"** means either a farmer (as defined in clause g below) or a wage worker engaged in agriculture.

Explanation: Workers eligible for protection under the Plantation Workers Act are excluded from the purview of this Act.

- c) **"Agriculture" means** the following occupations:

- (i) Farming, including the cultivation and tillage of soil, etc;
- (ii) Dairy farming;
- (iii) Production, cultivation, growing and harvesting of any horticultural commodity;
- (iv) Raising of livestock, bee-keeping or poultry;
- (v) Fishing and/ or fish farming or sericulture;
- (vi) Any practice performed on a farm as incidental to, or in conjunction with, the farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation of farm products);
- (vii) Growing fodder or thatching grass or for grazing cattle.

- d) **"Casual worker"** means a **wage worker** engaged in agriculture in consideration of wages, whose employment is of casual nature.
- e) **"Child"** means a person who has not completed 14 years of age.
- f) **"Employer"** means a natural or juridical person, or an association of such persons, by whom any *agricultural* worker is engaged or employed either directly or otherwise, in consideration of wages.
- g) **"Farmer"** means any person engaged in agricultural activities, either individually or with one or more persons, and not owning or operating a holding of more than two hectares or such limits as may be notified from time to time by the State government.
- h) **"Government"** means either Central Government, or State Government, or Union Territory administration, or local government, or Cantonment Boards as the case may be.
- i) **"Home worker"** means an unorganised non-agricultural sector worker involved in the production of goods or services as specified by an employer, in his / her own home or other premises of his / her choice (other than the work place of the

employer) for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.

- j) **“Identity card”** means a card issued to an agricultural worker carrying a unique number issued by the authorised agency of the State Board.
- k) **“Migrant worker”** includes inter state and intra state migrant workers.
- l) **“National Board”** means the National Social Security and Welfare Board for unorganised workers.
- m) **“Non-agriculture”** means all occupations other than those included in agriculture and includes occupations related to Mining and Quarrying, Manufacturing, Electricity, Gas and water supply and Construction sectors, and services (including trade; hotels; restaurants; transport, storage and communications; financing, insurance, real estate and business services; and community, social and personal services).
- n) **“Registered Agricultural Worker”** means an *agricultural* worker registered for benefits under this Act.
- o) **“Remuneration”** means as defined in the Equal Remuneration Act, 1976.
- p) **“Sexual Harassment”** is such unwelcome sexually determined behavior such as physical contact, advances, sexually coloured remarks, showing pornography or making sexual demands, whether verbal, textual, graphic or electronic or by any other actions, which may -

- (i) contain implied or overt promise of preferential treatment in that wage worker's employment; or

- (ii) contain an implied or overt threat of detrimental treatment in that wage worker's employment or an implied or overt threat about the present or future employment status of that wage worker and includes the creation of a hostile working environment; or

- (iii) interfere with a wage worker's work or create an intimidating, hostile or offensive work environment; or

- (iv) be humiliating and may constitute a health and safety problem.

Explanation1: Hostile Environment: A work environment is “hostile” when unwelcome verbal, non-verbal or physical behaviour focusing on sexuality is severe and pervasive enough to interfere with the victim's work performance or be intimidating or offensive to a reasonable person.

- q) **“State Board”** means the (name of the State) State Social Security and Welfare Board for agricultural workers.

- r) **"Self employed non-agricultural worker"** means any person who operates a non-farm enterprise or engages in a non-agricultural profession, trade or business, either on own account individually or with one or more persons.
- s) **"Unorganised non-agricultural sector"** consists of all unincorporated private non-agricultural enterprises owned by individuals or households engaged in the production and sale of non-agricultural goods and services and operated on a proprietary or a partnership basis and employing less than ten persons.
- t) **"Unorganised non-agricultural sector worker"** means a self employed non-agricultural worker, a home worker or a wage worker employed or engaged in the unorganised non-agricultural sector.
- u) **"Unorganised non-agricultural worker"** means an unorganised non-agricultural sector worker and also includes workers in the organized non-agricultural sector not protected by the existing laws relating to conditions of work and/or social security.
- v) **"Unorganised Worker"** means unorganised non-agricultural worker, and agricultural worker (except those eligible for protection under the Plantation Workers Act).
- w) **"Wages"** means as defined in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936).
- x) **"Wage worker"** means a person employed in agriculture for a remuneration directly by an employer or through any agency or contractor, whether exclusively for one employer or for one or more employers, whether simultaneously or otherwise, whether in cash and/or in kind whether as a temporary or casual worker, or as a migrant worker.

3. Rules of evidence

In this Act, notwithstanding anything contained in the Indian Evidence Act, 1872, the burden of proof that compliance with the provisions of the Act and the Scheme has been effected shall be entirely on the employer and the units of the Board, wherever applicable.

[Explanatory Note: This section facilitates shifting the burden of proof from the workers to the employer. This is a departure from the normal practice and ordinary rules of evidence, which places the burden on the plaintiff.]

Chapter II

CONDITIONS OF WORK TO BE ENSURED FOR THE WAGE WORKER

4. Physical Conditions of work

(1) Every employer shall provide in all the lands where agricultural work is carried on such basic amenities and first-aid facilities, and reasonable housing and provision of basic amenities for seasonal migrant workers, as may be prescribed.

(2) Every employer shall ensure that personal protective safety equipments are provided to such agricultural workers as are required to handle machinery and agro-chemicals as are hazardous to the life and limb of such workers. The State Board shall carry out periodic studies on occupational hazards arising in this sector and develop suitable outreach/extension programmes for this purpose.

(3) Every employer shall compensate a wage worker for any accident or occupational hazard arising out of or in the course of employment that results in any temporary, permanent, partial or total disablement of the wage worker, at rates to be specified in this behalf.

(4) The employer shall ensure that there is no sexual harassment of the agricultural wage worker at the place of work. The state government shall make appropriate rules concerning the disciplinary action that may be taken by an employer where a complaint of sexual harassment is established against a wage worker; and the compensation payable by an employer where a case of sexual harassment is established against the employer himself/herself.

(5) The State Board shall make rules with respect to child care facilities to be made available at local levels.

5. Duration of work

(1) The normal hours of work of a agricultural wage worker shall be limited to eight hours a day beyond which a worker shall be paid overtime at one and a half the normal rate of wages per hour.

Provided that nothing contained in this section shall be deemed to prohibit an agreement between the employer and the wage workers engaged in agriculture for working for less than eight hours on any particular day or days or on all days of employment or to affect any custom or practice prevailing in the locality under which the wage worker engaged in agriculture is required to work for less than eight hours.

Explanation: Nothing contained in this section shall extend the normal hours of work beyond eight hours to give effect to any custom or practice prevailing in the locality.

(2) Every eight hour working day of the agricultural wage worker shall have at least an half hour break, so however that the spread over of work shall not exceed ten hours.

(3) Women and adolescents shall not be employed as agricultural wage workers between the hours of 9 p.m. and 5 a.m., except where permitted under rules made in this behalf.

(4) Every agricultural wage worker shall be entitled to one paid day of rest after completing six continuous days of employment by or under a single employer.

6. Conditions of work and payment of wages

(1) No employer shall employ any agricultural wage worker, in contravention of the existing Acts which are applicable to the worker. In particular, the employer shall comply with the following Acts:

- a) Bonded Labour System (Abolition) Act, 1976;
- b) Child Labour (Prohibition and Regulation) Act, 1986;
- c) Minimum Wages Act, 1948; and
- d) Equal Remuneration Act, 1976

(2) (a) The Central government shall notify a National Minimum Wage.

(b) The National Minimum Wage shall apply to all agricultural wage workers in employments not notified under the Minimum Wages Act.

Provided that where the wage under the Minimum Wages Act is lower than the National Minimum Wage, the concerned State Government shall amend the prescribed Minimum Wage to bring it in conformity with the National Minimum Wage.

Provided further that till such time as this is done, the wage worker shall be entitled to receive the National Minimum Wage.

(c) The Central Government shall fix a National Minimum Wage for all employments, after taking into account the minimum basic needs of the wage and home workers and his/her family, variations in the cost of living in different areas and other parameters on the basis of consultation with a tripartite body consisting of workers, employers and the Government representatives.

(d) The National Minimum Wage shall be announced by the Central Government within one year of the implementation of this Act and shall be periodically reviewed through a modality prescribed by the National Board.

Provided that, till the announcement of the National Minimum Wage as above, the national floor level minimum wage recommended by the Ministry of Labour for 2004-05, shall, after adjusting for cost of living changes in different areas, be treated as the National Minimum Wage.

(3) Where the wages are determined by a piece rate system, the earnings of an agricultural worker working for 8 hours should be at least equal to the time rated minimum wages fixed for that category of work in the state concerned, and where the rates have not been fixed under the Minimum Wages Act, 1948 in the relevant state, the rates as fixed under clause (2) above.

(4) Wages in employments performed predominantly by women shall be brought on par with employments certified as equivalent in value by an Employment Certification Committee to be constituted by the State Board. The Employment Certification Committee shall periodically evaluate employments in the state for this purpose.

(5) Wages of agricultural workers shall be duly paid for the periods agreed upon. The wage period can on no account exceed one month; any delay in payment beyond this periods will require the employer to pay penal rates of interest, as specified in this behalf, for the period of the delay to the agricultural wage worker.

(6) There shall be no deduction from wages, including in such cases where such wages are paid as advance to the worker, in the form of interest, payments to contractors or agents, overvaluation of goods supplied or basic amenities provided including accommodation in the case of seasonal migrant workers, fines, inadequate or poor quality output, except in accordance with rules made in this behalf by the State Government.

(7)(a) Every employer shall provide an agricultural wage worker the details of remuneration received by him/her in such form as may be prescribed by the State Government.

(b) Every agricultural wage worker, except casual workers, shall receive a letter of employment from his/her employer, stating the terms of employment of his/her employment.

(c) Every employer shall maintain such registers and records as may be necessary to verify the employer's claim regarding the employment status of agricultural wage workers and details of payments made to them.

(8) All agricultural workers shall have the right to organise, by forming trade unions or other membership based organisations, for representation and collective bargaining in various fora. **(Note: This applies to both wage workers and farmers)**

(9) No employer shall discriminate against any agricultural wage worker on the grounds of sex, caste, religion, incidence of HIV-AIDS, migration status, place of origin, in employment, wage rates and conditions of work as laid down in this Act.

Chapter III

SOCIAL SECURITY BENEFITS

7. Framing of Schemes

(1) The Central Government shall formulate and notify in the Official Gazette a National Social Security Scheme containing such basic features as provided for in the Schedule to this Act.

(2) The National Social Security Scheme for the agricultural workers shall consist of a package of the following national minimum social security benefits:

- (i) Health benefits for self, spouse and children below the age of 18 years, and maternity benefits for women workers or spouse of men workers;
- (ii) Life and disability cover for natural or accidental death of the worker;

(iii) Old age security in the form of old age pension for workers above the age of 60 years or Provident Fund.

(3) The Scheme will be applicable to all eligible workers within a period of five years.

(4) In addition to the national minimum, the Central Government may frame on recommendations of the National Board such schemes as it may deem necessary or finance such schemes of the State governments/Welfare Boards as it may find appropriate, subject to availability of finance by such means as mentioned in Section 8 and may include those listed under (5) below.

(5) The State Government on recommendations of the State Board may formulate schemes for such unorganised workers as it may find appropriate to: (a) strengthen the national minimum social security by way of its own contribution, and/or (b) design and implement additional social security benefits through its own schemes. These may include:

- a) Provident Fund schemes;
- b) Employment injury benefit scheme;
- c) Housing schemes;
- d) Educational schemes for children of workers;
- e) Skill up-gradation;
- f) Funeral assistance;
- g) Marriage of daughters; and
- h) Any other schemes to enhance socio-economic security.

(6) The Central Government shall have the power to remove difficulties that arise in giving effect to the provisions of the Scheme by an order published in the Official Gazette, not inconsistent with the provisions of the Act, as appears to it necessary or expedient for the removal of the difficulty.

Chapter IV

NATIONAL SOCIAL SECURITY AND WELFARE FUND FOR UNORGANISED WORKERS

8. Constitution of a National Fund

The Central Government shall create a National Social Security and Welfare Fund to which contributions shall accrue from the following sources:

- a) Grants and loans from the Central Government;
- b) Contributions from workers, employers and Governments in the form and manner to be prescribed in the specified National Minimum Social Security Scheme, provided that the Central government may exempt any class of unorganised workers or employers from making their contribution under such conditions as may be specified;
- c) Any tax or cess that the Central Government may impose for the purpose of providing social security for unorganized workers;
- d) Any tax or cess that the Central Government may impose on commodities and/or services in lieu of employers' contributions (which are either difficult to collect or appropriate employers in the unorganised sector are not directly identifiable).

In addition to the above, contributions may also accrue from the following sources:

- e) Contributions from the national financial/developmental institutions; and
- f) Any voluntary contribution from individuals or institutions.

9. Existing Welfare Boards

Notwithstanding any other provision contained under any other law, the Appropriate Government may merge any existing Welfare Board/Boards and Welfare Fund/Funds constituted under any other law into the Board and Fund created under this Act.

10. Exemption from Income Tax

All financial contributions made by individuals and institutions to the National Social Security and Welfare Fund will be exempted from the payment of income tax under the Income Tax Act.

11. Utilisation of the National Fund

All contributions accruing to the National Board shall be credited to the Fund, which shall be applied for meeting the following:

- a) Expenses on the National Social Security Scheme and any other social security schemes of the Central Government;
- b) Grants to the State Boards, including for the purposes of the functioning of the Workers' Facilitation Centres;
- c) Expenses on the administration of the scheme;
- d) Investment in permitted schemes;
- e) Any other item in connection with the administration of this Act.

Chapter V

NATIONAL SOCIAL SECURITY AND WELFARE BOARD FOR UNORGANISED WORKERS

12. Establishment and Incorporation

With effect from such date as the Central Government may, by notification appoint, there shall be established for the purposes of this Act, a Board to be called the National Social Security and Welfare Board for Unorganised Workers.

13. Functions of the Board

The National Board shall perform the following functions:

- a) Administration of this Act and formulation of policies at the national level, and shall have such powers as may be laid down to direct, co-ordinate, supervise, and monitor the functioning of State Boards and the Central Welfare Boards;
- b) Review the working including auditing of the State Boards and the Central Welfare Boards every four years and make suitable recommendations to the Government(s) concerned for further improvement;
- c) Manage and maintain the National Social Security and Welfare Fund, provide financial assistance to State Boards; recommend new schemes and programmes and projects for implementation through the Fund;
- d) Advise the Central Government on policy matters relating to social security, and extension of schemes of social security such as ESI and EPF to unorganised sector workers; and health, safety and welfare of workers;
- e) Assist in capacity building of the State Boards;
- f) Collect, compile and publish statistics relating to the unorganised sector and undertake such promotional activities as may be decided from time to time;
- g) Monitor and review the impact of existing schemes, policies and programmes of various Ministries and Departments of Government of India on the unorganised sector workers and make appropriate recommendations;
- h) Advise the Government regarding the promotion of gainful employment opportunities and promotion of livelihood options and matters relating to welfare of unorganised sector workers;
- i) Identify skill and training requirements for unorganised workers and to advise the government accordingly;
- j) Carry out periodic surveys on the condition of work in the unorganised sector and make suitable recommendations to the government;

- k) Hold public hearings to entertain petitions submitted by the unorganized sector workers and make appropriate recommendations;
- l) Advise government on special protection measures for migrant workers and their families in providing the ration cards, housing and education to their children; and
- m) Provide for guidelines of periodic review of the national minimum wages fixed by the Central Government after taking into account the minimum basic needs of the wage workers and his/her family.

14. Composition of the Board

(1) The National Welfare Board for unorganised workers shall be constituted by the Central Government consisting of the following member organisations:

- a) Central Trade Unions and Agricultural Worker Unions; National level organizations, including federation of such organizations, of unorganised sector workers including the self-employed;
- b) National Level organisations of employers of unorganised sector workers;
- c) Central Government Ministries, State Boards, Central Welfare Boards and Public Agencies; and
- d) Experts in the area of management of insurance products and services; social security and related issues in the unorganized sector; management of finances, and other organizations and stakeholders working with the unorganized sector.

(2) The Central Government shall decide the criteria, number and names of such organisations to be represented on the National Board, with adequate representation of wage workers, self employed workers and women representing the workers.

(3) The National Board shall work through a Secretariat.

(4) The Chairman of the National Board shall be nominated by the Central Government from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration. The Member Secretary, who shall be the chief executive officer shall be designated by the Central Government being a person not below the rank of Secretary to the Government of India.

(5) The Board shall meet as often as possible but not less than twice a year.

15. Secretariat of the Board

The National Board shall have a secretariat with adequate professional and other staff. The staff of the National Board shall be governed by the Central Government rules and regulations existing from time to time. The annual budget of the National Board shall be prepared by the Secretariat and placed before the full Board for approval.

Chapter VI

STATE SOCIAL SECURITY AND WELFARE BOARDS FOR AGRICULTURAL WORKERS

16. Establishment of State Boards

(1) Each State shall have a State Board to implement the national minimum social security as well as design and implement State-level social security and welfare programmes for agricultural workers. Provided that wherever a similar Board is already in existence, the State government may merge or amalgamate the existing Board with the State Board. The State governments shall constitute the State Boards within one year of the date of commencement of this Act. The State Boards shall have the following as its members:

- a) Trade Unions and Agricultural Worker Unions; State level organizations, including federation of such organizations of unorganised agricultural sector workers including the farmers;
- b) State Level organisations of employers of unorganised agricultural sector workers;
- c) State Government Ministries, Welfare Boards and Public Agencies; and
- d) Experts in the area of management of insurance products and services; social security and related issues in the unorganized agricultural sector; management of finances, and other organizations and stakeholders working with the unorganized agricultural sector.

(2) The State Government shall decide the criteria, number and names of such organisations to be represented on the State Board, with adequate representation of wage workers, farmers and women representing the workers.

(3) The State Board shall work through a Secretariat.

(4) The Chairman of the State Board shall be nominated by the State Government from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration. The Member Secretary, who shall be the chief executive officer shall be designated by the State Government being a person not below the rank of Secretary to the Government of the State.

(5) The Board shall meet as often as possible but not less than twice a year.

17. State Fund

(1) The State government shall create a State Social Security and welfare Fund to which contributions shall accrue from the following sources:

- (i) Grants and loans from National Board and the State government;
- (ii) Any tax or cess that the State government may impose on commodities and/or services in lieu of employers' contributions (which are either difficult to collect or appropriate employers in the unorganised Sector are not directly identifiable);
- (iii) Contribution toward additional social security scheme (if any) formulated by the State Board;

(iv) Contributions from the national financial/developmental institutions; and

(v) Any voluntary contribution from individuals or institutions.

(2) All financial contributions made by individuals and institutions to the State Social Security and welfare Fund will be exempted from the payment of income tax under the Income Tax Act.

(3) All contributions accruing to the State Boards shall be credited to the State Social Security and Welfare Fund which shall be applied for meeting the following:

- a) Expenses on the implementation of the national minimum social security and additional social security schemes of the State Government;
- b) Grants to the Welfare Boards and the Workers' Facilitation Centres;
- c) Expenses on the administration of the State Board as per the annual budget approved by the Executive Council;
- d) Investment in permitted schemes; and
- e) Any other item in connection with the administration of this Act.

18. Functions

The State Boards will perform the following functions:

- a) Administer this Act at the State level including ensuring collection of contributions, maintenance of individual accounts of the registered agricultural workers and records of receipt of contribution from individual employers;
- b) Implement the national minimum social security for agricultural workers through appropriate organisational arrangements, negotiate with the providers for the best possible offers, and stipulate norms for the evaluation of the work done by the Workers' Facilitation Centres;
- c) Frame guidelines to ensure portability of benefits to workers;
- d) Frame and implement social security schemes, in addition to the National Social Security Scheme, that the State Board may design in consultation with the State government;
- e) Provide financial assistance to other member organisations implementing social security programmes;
- f) Advise the State government on policy matters relating to social security, health and safety and welfare of agricultural workers;
- g) Create awareness among the agricultural workers about the need for social security registration and the existence of various social security schemes;

- h) Collect, compile and publish statistics, with the help of statistical organisations, regarding agricultural workers and their conditions of work, and employers who engage these workers at the *Panchayat/Municipal*, District, State levels with such details as gender and age, nature of occupation, level of earnings, etc.;
- i) Review the working of the Welfare Boards and other implementing agencies on the basis of annual reports and statements of audited accounts or specially commissioned reports and make suitable recommendations to the government(s) concerned for further improvement;
- j) Assist in capacity building of Workers Welfare Boards and Workers' Facilitation Centres;
- k) Initiate innovative approaches, through interaction across sectors and constituencies, for the enhancement of welfare, working conditions and productivity of agricultural workers;
- l) Submit annual report to the National Board within four months from the last day of the previous financial year along with an audited statement of accounts;
- m) Monitor and review the impact of existing schemes, policies and programmes of various Ministries and Departments of the concerned State Government on agricultural workers and make appropriate recommendations;
- n) Advise the Government regarding the promotion of gainful employment opportunities and promotion of livelihood options for agricultural workers;
- o) Encourage the promotion of labour organizations and cooperatives to secure gainful employment and dignified conditions of work;
- p) Identify skill and training requirements for agricultural workers and to advise the government accordingly;
- q) Carry out periodic surveys on the condition of work in the agricultural sector and make suitable recommendations to the government;
- r) Hold public hearings to entertain petitions submitted by agricultural workers and make appropriate recommendations;
- s) Carry out surveys to determine the safety and health standards required in the agricultural sector, and publish manuals and outreach programmes for worker safety;
- t) Review the Minimum Wages for the state after taking into account the cost of living and minimum basic needs of the agricultural wage workers and his/her family;
- u) Constitute Employment Certification Committee to bring the wages in employments performed predominantly by women on par with employments certified as equivalent in value and periodically evaluate employments in the state for this purpose; and
- v) Carry out periodic studies on occupational hazards arising in this sector and develop suitable outreach/extension programmes for this purpose;

19. Secretariat of the Board

The State Board shall have a secretariat with adequate professional and other staff. The staff of the State Board shall be governed by the State government rules and regulations existing from time to time.

Chapter VII

REGISTRATION OF AGRICULTURAL WORKERS

20. Eligibility for registration and for social security benefits

Every agricultural worker shall be eligible for registration subject to the following conditions:

- a) He/she should have completed 18 years of age;
- b) His monthly income does not exceed Rs.7000/- in 2007 (roughly equivalent to Rs. 6500/- per month recommended by the Indian Labour Conference held in December 2005); and
- c) a self-declaration confirming that he/she is an agricultural worker not owning or operating a holding of more than two hectares or such limits as may be notified from time to time by the State government; .

21. Unique Identification Social Security Number

Each registered agricultural worker shall be eligible for receiving a Unique Identification Social Security Number in the form of an Identity Card issued in the name of the State Board.

22. Identity card

The State Government shall decide the manner of registration of unorganized agricultural sector workers, issuance of identity cards and manner of record keeping at the district level.

23. Portability of registration

The Identity Card issued to agricultural workers shall remain valid even in the case of migration to another district in the country and the new address can be changed on application to the authority concerned.

24. Cessation of registration

The National Board shall draw up rules to decide on the period of validity of registration, renewals, cessation of registration and settlement of claims on the death of the card holder.

25. Membership of Existing Welfare Boards

In case, any agricultural worker is eligible for benefit under one or more existing Central or Welfare Boards, in addition to his eligibility for the National Minimum Social Security Scheme,

- (1) The agricultural worker shall retain the option of membership of the Fund with the highest benefit.
- (2) The National/State Board may decide the criteria on which the agricultural worker can be eligible for benefit under the National Minimum Social Security Scheme in addition to membership in other Boards/schemes.

Chapter VIII

DELIVERY OF SOCIAL SECURITY BENEFITS

26. Implementation Machinery

The State Boards shall be responsible for the delivery of mandatory minimum social security benefits and shall decide the manner in which social security benefits shall have to be delivered to the registered agricultural workers. This may include tie-ups with local organisations like banks, post offices and insurance companies.

27. Workers' Facilitation Centres

(1) In order to extend coverage and reach the agricultural workers in remote areas, the State Boards may designate any one or more of the following at the local level as Workers' Facilitation Centres (WFC):

- a) Existing Worker Welfare Boards and their local offices;
- b) Local Panchayati Raj Institutions (PRI);
- c) Organisations of workers including trade unions, associations and co-operatives in the agricultural sector;
- d) Self-help Groups (SHGs); and
- e) Non-profit organisations working among the agricultural sector workers.

(2) Such designated Workers' Facilitation Centres shall perform the following functions:

- a) Disseminate information on available social security schemes for the agricultural workers;
- b) Facilitate the filling, processing and forwarding of application forms for registration of agricultural workers;
- c) Obtain registration from the District Committee and deliver the Identity Cards to the registered agricultural workers;

- d) Facilitate the enrollment of the registered agricultural workers in social security schemes; and
- e) Facilitate the delivery of social security benefits through the institutions designated to deliver such social security (insurance companies, post offices, Departments of the State/Central Government and other institutions concerned).

(3) The State Boards shall compensate the costs incurred by the Workers' Facilitation Centres for performance of its functions.

28. Premium and Compensation/Benefits:

(1) The National Board shall decide the amount and manner of payment of contribution/fee by the agricultural workers to the National Social Security Schemes.

(2) For schemes initiated by the State Boards, the State Board concerned shall decide the contributions of agricultural workers and employers.

(3) The claim of registered agricultural workers for social security benefits shall lie solely against the State Board and it shall be the responsibility of the State Board to settle the dues, if any.

Chapter IX

ENFORCEMENT AND DISPUTE RESOLUTION BODIES

29. Disputes Resolution Council and Conciliation Committees

(1) The State Government shall, by rules, constitute Dispute Resolution Council (DRC) at District level and Conciliation Committees (CC) at an appropriate level below the district level i.e Block/Tehsil/Mandal level, for resolution of disputes relating to the non observance of provisions of this Act arising amongst the agricultural wage workers , employers, Workers' Facilitation Centres and State Boards.

(2) The Composition of the DRCs and CCs shall be tripartite and consist of an officer designated by the State Government to be the Member Secretary, one person nominated from the most representative of membership-based organisations of the agricultural workers in that State, having membership in the district, and a person nominated from the most representative organisation of employers' organisations in the agricultural sector in the state. The State government, may, if it thinks fit, appoint two persons as assessors to advice the conciliation Committee on the proceedings before it.

(3) When there is a complaint regarding sexual harassment, the CC/DRC shall co-opt two other members from the Panchayats/local bodies, who shall be women, at the time of dealing with such complaints. The CC/DRC, if satisfied that a case of sexual harassment is established, direct the employer to ensure that necessary action is taken against the person guilty of such conduct.

(4) The honorarium and/ or the allowances to be paid to the workers and employers representatives on the DRC shall be determined by the State Government.

(5) The persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other related conditions, the procedure to be followed in the discharge of their functions, conduct of meetings, periodicity of meetings and the manner of filling vacancies among the members of the CC/DRC, shall be such as may be prescribed by the State Government.

(Note: In order to determine the most representative organisation, membership figures including the verification of trade unions carried out by the CLC may be relied upon.)

30. Functions and powers of the Conciliation Committee and Dispute Resolution Council

(1) Any agricultural wage worker or employer or an organisation representing such worker or Workers' Facilitation Centres or the State Board may raise a dispute relating to the non-observance of provisions of this Act by filing a complaint before the Conciliation Committee in the manner prescribed by the State Government. The DRC may also take *suo moto* cognizance of such disputes.

(2) Every complaint so filed shall be deemed to be a dispute under this Act notwithstanding that such a complaint had not been referred to the employer at the first instance, and been rejected.

(3) The status of employment of agricultural workers in the dispute raised before the CC or DRC shall not be affected merely for the reason that a complaint regarding non observance of provisions of this Act has been raised before the DRC or CC.

(4) (a) Upon reference of a dispute, the Conciliation Committee shall proceed to arrive at a conciliated settlement. The Conciliation Committee shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters connected therewith, and may do all such things as they think fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(b) The inspectors appointed under the Minimum Wages Act, 1948, shall assist the CC/DRC in their duties and shall carry such investigation of complaints as required by the CC/DRC.

(c) Where the CC/DRC apprehends violation of the provisions of this Act the inspectors may be directed to investigate and report the matter expeditiously.

(5) The CC/DRC or the inspectors designated for this purpose under sub- section 4(b) above may for the purpose of investigating the dispute, after giving reasonable notice, enter the premises to which the dispute relates. The Conciliation Committee shall also have the powers under the Code of Civil Procedure 1908 to enforce the attendance of parties, compel the production of documents and material objects.

(6) The Conciliation Committee may if it thinks fit appoint one or more persons having special knowledge of the matter under consideration to advise it on the proceeding before it.

(7) The time limit for the conclusion of the proceedings of the CC shall not exceed four weeks. Where the parties to the dispute apply in the prescribed manner, whether jointly or separately, to the CC for the extension of such period and the member-secretary of the CC considers it necessary or expedient to extend such period, he/she may for reasons to be recorded in writing, extend such period by such further period as he/she may think fit;

Provided that no proceedings before a CC shall lapse merely on the ground that the period specified under this sub section has expired without such proceedings being completed.

(8) If the Conciliation Committee is able to arrive at a conciliated settlement, it shall record its finding to such effect and shall issue such directions as considered necessary.

(9) Upon failure of such conciliation proceedings, the Conciliation Committee shall record its findings and refer the dispute to the DRC, which shall within two weeks of receipt of reference, refer the matter to the adjudicator provided in this section.

(10) Where a dispute is raised directly before the DRC, the DRC shall ordinarily refer the dispute to the CC below it, under whose jurisdiction the dispute falls.

(11) In cases of disputes raised directly before it or referred to it by the CC under subsection (9) above, the DRC may itself seek to bring about a conciliated settlement.

(12) In such cases, the DRC shall have all the powers mentioned in section (4) and (5) specified above.

(13) If the DRC is able to arrive at a conciliated settlement, it shall record its finding to such effect and shall issue such directions as considered necessary.

(14) In case of failure of conciliation, the DRC shall record its finding and refer the matter directly to the Agricultural Tribunal referred to in section 31, within 4 weeks of the reference of the dispute. Where the parties to the dispute apply in the prescribed manner, whether jointly or separately, to the DRC for the extension of such period and the member-secretary of the DRC considers it necessary or expedient to extend such period, he/she may for reasons to be recorded in writing, extend such period by such further period as he/she may think fit.

Provided that no proceedings before a DRC shall lapse merely on the ground that the period specified under this sub section has expired without such proceedings being completed.

(15) The DRC shall also monitor the functioning of the CCs.

(16) Where the dispute pertains to any matter covered by any law mentioned in Section 6(1), the CC/DRC shall forward the complaint to the appropriate authority created under the relevant Act for adjudication.

31. Adjudication and Constitution of Agricultural Tribunals

(1) The State Government shall by notification in the Official Gazette constitute Agricultural Tribunals for each district for the purpose of adjudication of disputes relating to agricultural workers under this Act.

(2) The Agricultural Tribunal shall consist of a sole member who shall an officer of the Government not below the rank of a District Labour Officer or Deputy Collector for each district, or any officer with experience as Civil Judge or as Magistrate to be the Adjudicator under the section.

(3) The Agricultural Tribunal shall hold sessions in such Block/ Tehsil/Mandal towns and with such frequency, as may be specified in the rules made in this behalf by the State Government, in order to adjudicate upon the disputes referred to it by the DRCs at the Block/ Tehsil/Mandal level.

(Note: NO appeal has been provided for under this Act. Moving the High Courts under Art. 226 of the Constitution would of course be available).

(4) The State Government shall issue such notifications and directions as are necessary to ensure that the adjudication proceedings are concluded expeditiously with minimum loss of time and costs to the parties involved. The award of the Agricultural Tribunal shall be publicised in the manner as prescribed by the State Government.

(5) The designated department(s) of the State Government concerned shall be responsible for enforcement and implementation of the provisions of this Act.

32. Contravention of provisions regarding employment of agricultural workers

(1) Whoever contravenes any provisions of this Act or the rules made there under, other than those made punishable under any other law, regarding the employment of agricultural workers shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and in case of continuing contravention, with additional fine which may extend up to one hundred rupees for every day during which such contravention continues.

(2). No court shall take cognizance of an offence punishable under this Act or the abetment of any such offence, save on a complaint made by, or the previous sanction in writing of or under the authority of the State Government. No court inferior to that of a Metropolitan Magistrate or a judicial magistrate of the first class shall try any offence punishable under this Act.

(3). No suit, prosecution or other legal proceeding shall lie against any person for anything done in good faith or intended to be done in pursuance of this Act or rules.

(4) No court shall take cognisance of an offence punishable under this Act unless the complaint is made within six months from the date on which the alleged commission of the offence came to the knowledge of the CC or the DRC concerned.

(5) Any person who commits a breach of any conciliated settlement arrived at in the CC or DRC or final award by the Tribunal, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, [and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first] and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.

(6) Where any money is due to an agricultural worker under a settlement or an award, the workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the state government for the recovery of the money due to him, and if the state government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

Chapter X

MISCELLANEOUS

33. Accounts and Audit

- (a) The National Board and the State Boards shall maintain proper accounts and other relevant records and prepare annual statements of accounts in such form as may be prescribed.
- (b) The National Board shall furnish to the Central Government, before such date as may be prescribed, the audited copy of the consolidated account of itself and the Funds together with the auditor's report.

34. Power to make Rules

The Central and State governments shall have the power to make rules for the purposes of carrying out the objects of the Act.

35. Savings

(1) This law will not affect the application of any other State or Central Acts which applies to the agricultural worker or to the employer under this Act. (Note: Even if the employer or establishment is covered, the agricultural worker who is not covered under the formal sector law would get benefit under this law for the matters covered here).

(2) Notwithstanding anything contained in this Act, wherever any agricultural worker is eligible for superior or better benefits under any existing law in force, the worker shall continue to be entitled for such benefits.

36. Effect of laws and agreements inconsistent with this Act (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act.

(2) Nothing contained in this Act shall be construed to preclude an agricultural worker from entering into an agreement with his/her employer for granting him/her rights or privileges in respect of any matter which are more favourable to him/ her than those to which he/she would be entitled under this Act.

Schedule of the Agricultural Workers Conditions of Work And Social Security Bill, 2007.

(See section 7 (1))

National Social Security Scheme for Agricultural Workers

Back ground

The agricultural workers in the Unorganised Sector face problems that arise out of deficiency or capability deprivation in terms of inadequate employment, low earnings, low health, etc., as well as of adversity in the absence of fall back mechanisms (safety net). These workers have limited or no formal social security cover which increases their vulnerability during times of illness, old age, unemployment and untimely death. The absence of social security mechanisms is a critical factor in downturns in the conditions of these households, many of whom are already very poor. It destroys the workers ability to contribute meaningfully, and to increasing production and productivity. It leads to disaffection increasing social costs, widespread crimes, and persistent ill health. Presently, less than 6% of the entire unorganised sector workforce has recourse to any social security cover.

Objectives

1. To provide for a right based entitlement for the agricultural workers, and
2. To provide for a universal national minimum social security scheme to cover all the workers in the unorganised agricultural sector in a phased manner within a period of 5 years.

Definitions

Words and expressions shall have the meaning respectively assigned to them under Section. 2 of the Act.

Coverage and eligibility

This scheme may be called the National Social Security Scheme, 2007.

This scheme shall come into force on....

This scheme applies to all agricultural workers, hereafter referred to as 'worker' to whom the Act extends who

- a) has completed 18 years of age;
- b) whose monthly income does not exceed Rs.7000/- in 2007 (roughly equivalent to Rs. 6500/- per month recommended by the Indian Labour Conference held in December 2005);

- c) has submitted a prescribed self-declaration form confirming that he/she is an agricultural worker not owning or operating a holding of more than two hectares or such limits as may be notified from time to time by the State government; and
- d) has paid the contribution/ fee as prescribed.

Benefits

The national social security scheme shall provide for a package of the following minimum benefits:

(a) Health Insurance

- (i) Each worker will be entitled to hospitalization for himself and his family members, costing Rs. 15000 a year in total with Rs. 10000 maximum per ailment in designated, hospitals or clinics, public or private, recognized by the State Board, with at least 15 beds. If there is no such clinic available within 10 kilometers from the worker's residence, he would be entitled to a transport cost to the nearest hospital on actuals upto a maximum of 5% of hospital cost. All payments will be made by the insurance company to the clinics/hospitals directly and except for the transportation cost, no cash payment will be made to the workers;
- (ii) Maternity Benefits of Rs. 1000 maximum or actuals for the member or the spouse, per year;
- (iii) Sickness cover of Rs 750/- for earning head of family (during hospitalisation) for 15 days (only in excess of 3 days) during the policy period @ Rs 50/- per day.

(b) Life and disability cover

In case of Natural Death:	Rs. 30,000/-
In case of Death or total disability due to accident:	Rs. 75,000/-
In case of Partial Permanent Disability due to accident:	Rs. 37,500/-

(c) Old Age Security

- (i) All BPL agricultural workers will get a monthly pension of Rs. 200 at 60 plus. This would be irrespective of the year of his/her registration with the scheme.
- (ii) All agricultural workers other than BPL and registered in the scheme will be entitled to a Provident Fund which will accumulate to his account from the year of his/her registration.
- (iii) At the end of 60th year the APL agricultural workers will have 3 options. He can continue with the provident fund scheme by contributing the full premium i.e. both the government's and his contribution, or, withdraw the whole amount of the Provident Fund accumulated to that date, or

alternatively, he could buy an Annuity with the accumulated amount and the returns would be like his pension.

- (iv) The Provident Fund Scheme can also be used as unemployment insurance. After 10 years' contribution, the worker, if he becomes unemployed and is verified to be so by the Workers Facilitation Centre (WFC), he would be entitled to draw up to 50% of the accumulated sum as unemployment benefits for a period of 6 months. After six months or before that if he becomes employed again, the worker will be able to continue with the scheme by renewing his contribution.

Organization

The organization model is federal in character where the implementation will be the responsibility of the State Social Security and Welfare Board for agricultural workers (SSSWB) with the assistance of WFC at the grass root level, supervised and monitored by the National Social Security and Welfare Board.

The structure is as follows:

- (i) There will be a National Social Security and Welfare Board (NSSWB) at the central level, representatively constituted, with the central government as the prime mover. This National Board will be supervising and monitoring the implementation of the scheme at different levels and will also be responsible for running for National Social Security and Welfare Fund.

At the state level there would be a State Social Security and Welfare Board for agricultural workers (SSSWB), representatively constituted, which will be the main implementing agency at the grassroots level through Workers Facilitation Centre (WFC).
- (ii) The WFC would be appointed by the SSSWB, keeping in mind the need to make them as representative as possible with the participation of institutions/organisations listed under section 27(1) of the Bill. WFC would perform the various functions as listed in section 27(2) of the Bill.
- (iii) SSSWBs will negotiate with the insurance agency and other service providers with the help of NSSWF, the best possible terms for providing the prescribed benefits and also the selection of health care institutions.
- (iv) SSSWBs would also set up their State Social Security and Welfare Fund (SSSWF) from sources specified in section 17, which would accumulate till they are transferred to the accounts of the beneficiaries held by the designated institutions such as Post Offices/ banks. National Social Security and Welfare Fund (NSSWF) contribution should also be deposited with SSSWF for being transmitted to the workers account once the scheme starts implementation.

Financing

The scheme would be financed by the National Social Security and Welfare Fund (NSSWF) through any of the sources as specified in section 8 of the Act. However, the share of contribution of the BPL workers, if any, would be borne by the Central Government.

The total outlay of the scheme proposed for agricultural workers when all of them are covered is estimated at Rs 19431 crore, which may be entirely borne by the Central Government. If however, the total cost is shared between the Centre and States in the ratio of 75:25, then, the Centre's and the State Governments' share is estimated at Rs 14573 crore and Rs 4858 crore respectively. The share of both Centre and States could be further reduced, if contributions of employers and workers or tax/ cess as mentioned in section 8 are available.

UNORGANISED NON-AGRICULTURAL WORKERS' CONDITIONS OF WORK AND SOCIAL SECURITY BILL, 2007.

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36. Effect of laws and agreements inconsistent with this Act

Statement of objects and reasons

The unorganised non-agricultural sector of the economy in India employs about 30 per cent of the total workforce. The workers in this sector may be broadly divided into wage workers, and self-employed workers (comprising independent self-employed as well as home workers). This Bill is intended to provide minimum conditions of work for those unorganised workers who are wage and home workers in the unorganised sector, as well as other wage workers whose minimum conditions of work are not regulated by any other legislation. This Bill is also intended to provide a measure of social security to the workers in the unorganised sector as well as informal/ unorganized workers in the organized sector. It mandates the Central and State governments to implement a package of National Minimum Social Security Scheme to which all unorganized workers would be entitled. It also provides a mechanism for dispute resolution for the unorganised workers.

UNORGANISED NON-AGRICULTURAL WORKERS' CONDITIONS OF WORK AND SOCIAL SECURITY BILL, 2007.

A BILL

to provide for regulation of conditions of work, social security and welfare, and a dispute resolution mechanism for unorganised Non-agricultural workers and to provide for other matters connected therewith or incidental thereto.

BE it enacted by Parliament in the fifty-eighth year of the Republic of India as follows:-

Chapter I

PRELIMINARY

1. Short title, extent, commencement and application

(1) This Act may be called Unorganised Non-agricultural Workers' Conditions of Work and Social Security Act, 2007.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States and different areas in a State and for different provisions of this Act, within six months from the date of the assent.

2. Definitions

For the purposes of this Act, unless the context otherwise requires, -

- a) **"Adolescent"** means a person of the age of 14 years and above and who has not completed 18 years of age.
- b) **"Agricultural worker"** means either a farmer (as defined in clause g below) or a wage worker engaged in agriculture.

Explanation: Workers eligible for protection under the Plantation Workers Act are excluded from the purview of this Act.

- c) **"Agriculture"** means the following occupations:

- (i) Farming, including the cultivation and tillage of soil, etc;
- (ii) Dairy farming;
- (iii) Production, cultivation, growing and harvesting of any horticultural commodity;
- (iv) Raising of livestock, bee-keeping or poultry;
- (v) Fishing and/ or fish farming or sericulture;
- (vi) Any practice performed on a farm as incidental to, or in conjunction with, the farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation of farm products);
- (vii) Growing fodder or thatching grass or for grazing cattle.

- d) **"Casual worker"** means a **wage worker** engaged in agriculture in consideration of wages, whose employment is of casual nature.
- e) **"Child"** means a person who has not completed 14 years of age.
- f) **"Employer"** means a natural or juridical person, or an association of such persons, by whom any unorganised *non-agricultural* worker is engaged or employed either directly or otherwise, in consideration of wages.
- g) **"Farmer"** means any person engaged in agricultural activities, either individually or with one or more persons, and not owning or operating a holding of more than two hectares or such limits as may be notified from time to time by the State government.
- h) **"Government"** means either Central Government, or State Government, or Union Territory administration, or local government, or Cantonment Boards as the case may be.

- i) **"Home worker"** means an unorganised non-agricultural sector worker involved in the production of goods or services as specified by an employer, in his / her own home or other premises of his / her choice (other than the work place of the employer) for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.
- j) **"Identity card"** means a card issued to a **non-agricultural** worker carrying a unique number issued by the authorised agency of the State Board.
- k) **"Migrant worker"** includes inter state and intra state migrant workers.
- l) **"National Board"** means the National Social Security and Welfare Board for unorganised workers.
- m) **"Non-agriculture"** means all occupations other than those included in agriculture and includes occupations related to Mining and Quarrying, Manufacturing, Electricity, Gas and water supply and Construction sectors, and services (including trade; hotels; restaurants; transport, storage and communications; financing, insurance, real estate and business services; and community, social and personal services).
- n) **"Registered Non-agricultural Worker"** means an unorganised *non-agricultural* worker registered for benefits under this Act.
- o) **"Remuneration"** means as defined in the Equal Remuneration Act, 1976.
- p) **"Sexual Harassment"** is such unwelcome sexually determined behavior such as physical contact, advances, sexually coloured remarks, showing pornography or making sexual demands, whether verbal, textual, graphic or electronic or by any other actions, which may -

- (i) contain implied or overt promise of preferential treatment in that wage worker's employment; or

- (ii) contain an implied or overt threat of detrimental treatment in that wage worker's employment or an implied or overt threat about the present or future employment status of that wage worker and includes the creation of a hostile working environment; or

- (iii) interfere with a wage worker's work or create an intimidating, hostile or offensive work environment; or

- (iv) be humiliating and may constitute a health and safety problem

Explanation1: Hostile Environment: A work environment is "hostile" when unwelcome verbal, non-verbal or physical behaviour focusing on sexuality is severe and pervasive enough to interfere with the victim's work performance or be intimidating or offensive to a reasonable person.

- q) **"State Board"** means the (name of the State) State Social Security and Welfare Board for unorganised *non-agricultural* workers.

- r) **"Self employed non-agricultural worker"** means any person who operates a non-farm enterprise or engages in a non-agricultural profession, trade or business, either on own account individually or with one or more persons.
- s) **"Unorganised non-agricultural sector"** consists of all unincorporated private non-agricultural enterprises owned by individuals or households engaged in the production and sale of non-agricultural goods and services and operated on a proprietary or a partnership basis and employing less than ten persons.
- t) **Unorganised non-agricultural sector worker"** means a self employed non-agricultural worker, a home worker or a wage worker employed or engaged in the unorganised non-agricultural sector.
- u) **"Unorganised non-agricultural worker"** means an unorganised non-agricultural sector worker and also includes workers in the organized non-agricultural sector not protected by the existing laws relating to conditions of work and/or social security.
- v) **"Unorganised Worker"** means unorganised non-agricultural worker, and agricultural worker (except those eligible for protection under the Plantation Workers Act).
- w) **"Wages"** means as defined in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936).
- x) **"Wage worker"** means a person employed for a remuneration as an unorganised non-agricultural worker, directly by an employer or through any agency or contractor, whether exclusively for one employer or for one or more employers, whether simultaneously or otherwise, whether in cash and/or in kind, whether as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers.

3. Rules of evidence

In this Act, notwithstanding anything contained in the Indian Evidence Act, 1872, the burden of proof that compliance with the provisions of the Act and the Scheme has been effected shall be entirely on the employer and the units of the Board, wherever applicable.

[Explanatory Note: This section facilitates shifting the burden of proof from the workers to the employer. This is a departure from the normal practice and ordinary rules of evidence, which places the burden on the plaintiff.]

Chapter II

CONDITIONS OF WORK TO BE ENSURED FOR THE WAGE WORKER AND HOME WORKER

4. Physical Conditions of work

- (1) Every unorganised non-agricultural wage worker shall be entitled to the provisions for lighting, ventilation, safe drinking water, washing facilities, first aid box available at a place of work maintained by the employer and reasonable housing and provision of basic amenities for seasonal migrant workers shall be as may be prescribed.
- (2) Every employer shall provide the unorganised wage or home worker with adequate safety equipment while handling hazardous substances and equipments. The State Board shall carry out periodic studies on occupational hazards arising in this sector and develop suitable outreach/extension programmes for this purpose.
- (3) Every employer shall compensate a wage or home worker for any accident or occupational hazard arising out of or in the course of employment that results in any temporary, permanent, partial or total disablement of the wage worker, at rates to be specified in this behalf.
- (4) The employer shall ensure that there is no sexual harassment of the non-agricultural wage worker at the place of work. The state government shall make appropriate rules concerning the disciplinary action that may be taken by an employer where a complaint of sexual harassment is established against a wage worker; and the compensation payable by an employer where a case of sexual harassment is established against the employer himself/herself.
- (5) The State Board shall make rules with respect to child care facilities to be made available at local levels.

5. Duration of work

- (1) The normal hours of work of a non-agricultural wage worker shall be limited to eight hours a day beyond which a worker shall be paid overtime at double the normal rate of wages per hour.
- (2) Every eight hour working day of the non-agricultural wage worker shall have at least an half hour break, so however that the spread over of work shall not exceed ten hours.
- (3) Women and adolescents shall not be employed as non-agricultural wage workers between the hours of 9 p.m. and 5 a.m., except where permitted under rules made in this behalf.
- (4) Every non-agricultural wage worker shall be entitled to one paid day of rest after completing six continuous days of employment by or under a single employer.

6. Conditions of work and payment of wages

(1) No employer shall employ any unorganised non-agricultural wage worker or home worker, in contravention of the existing Acts which are applicable to the worker. In particular, the employer shall comply with the following Acts:

- a) Bonded Labour System (Abolition) Act, 1976;
- b) Child Labour (Prohibition and Regulation) Act, 1986;
- c) The Employment of Manual scavengers and Construction of Dry Latrines (Prohibition) Act, 1993;
- d) Minimum Wages Act, 1948; and
- e) Equal Remuneration Act, 1976

(2) (a) The Central government shall notify a National Minimum Wage.

(b) The National Minimum Wage shall apply to all unorganised non-agricultural wage and home workers in employments not notified under the Minimum Wages Act.

Provided that where the wage under the Minimum Wages Act is lower than the National Minimum Wage, the concerned State Government shall amend the prescribed Minimum Wage to bring it in conformity with the National Minimum Wage.

Provided further that till such time as this is done, the wage worker shall be entitled to receive the National Minimum Wage.

(c) The Central Government shall fix a National Minimum Wage for all employments, after taking into account the minimum basic needs of the wage and home workers and his/her family, variations in the cost of living in different areas and other parameters on the basis of consultation with a tripartite body consisting of workers, employers and the Government representatives.

(d) The National Minimum Wage shall be announced by the Central Government within one year of the implementation of this Act and shall be periodically reviewed through a modality prescribed by the National Board.

Provided that, till the announcement of the National Minimum Wage as above, the national floor level minimum wage recommended by the Ministry of Labour for 2004-05, shall, after adjusting for cost of living changes in different areas, be treated as the National Minimum Wage.

(3) Where the wages of a wage worker or home worker are determined by a piece rate system, the earnings of a non-agricultural worker working for 8 hours should be at least equal to the time rated minimum wages fixed for that category of work in the state concerned, and where the rates have not been fixed under the Minimum Wages Act, 1948 in the relevant state, the rates as fixed under clause (2) above.

(4) Wages in employments performed predominantly by women shall be brought on par with employments certified as equivalent in value by an Employment Certification Committee to be constituted by the State Board. The Employment Certification Committee shall periodically evaluate employments in the state for this purpose.

(5) Wages of non-agricultural workers shall be duly paid for the periods agreed upon. The wage period can on no account exceed one month; any delay in payment beyond this periods will

require the employer to pay penal rates of interest, as specified in this behalf, for the period of the delay to the non-agricultural wage worker.

(6) There shall be no deduction from wages/remuneration due to a wage/home worker, including in such cases where such wages are paid as advance to the worker, in the form of interest, payments to contractors or agents, overvaluation of goods supplied or basic amenities provided including accommodation in the case of seasonal migrant workers, fines, inadequate or poor quality output, except in accordance with rules made in this behalf by the State Government.

(7) Where a home worker has supplied his/her own tools, equipment or used part of his/her own dwelling for any process, the value of such contribution shall be ascertained by the employer and be added to the wages payable to such worker; provided however that the amount imputed for this purpose shall not be less than such percentage or premium as specified by the State Government.

(8) (a) Every unorganised wage and home worker shall receive a wage slip from his/her employer providing details of remuneration received by him/her.

(b) Every unorganised non-agricultural wage worker, except casual workers, shall receive a letter of employment from his/her employer, stating the terms of employment of his/her employment.

(c) Every employer shall maintain such registers and records as may be necessary to verify the employer's claim regarding the employment status of non-agricultural wage and home workers and details of payments made to them.

(9) All unorganised non-agricultural workers shall have the right to organise, by forming trade unions or other membership based organisations, for representation and collective bargaining in various fora. **(Note: This applies to both wage workers and self employed workers)**

(10) No employer shall discriminate against any unorganised non-agricultural wage worker on the grounds of sex, caste, religion, incidence of HIV-AIDS, migration status, place of origin, in employment, wage rates and conditions of work as laid down in this Act.

Chapter III

SOCIAL SECURITY BENEFITS

7. Framing of Schemes

(1) By this Act, the Central Government shall formulate and notify in the official Gazette a National Social Security Scheme containing such basic features as provided for in the Schedule to this Act.

(2) The National Social Security Scheme for the unorganised non-agricultural workers shall consist of a package of the following national minimum social security benefits:

- (i) Health benefits for self, spouse and children below the age of 18 years, and maternity benefits for women workers or spouse of men workers;
- (ii) Life and disability cover for natural or accidental death of the worker;

(iii) Old age security in the form of old age pension for workers above the age of 60 years or Provident Fund.

(3) The Scheme will be applicable to all eligible workers within a period of five years.

(4) In addition to the national minimum, the Central Government may frame on recommendations of the National Board such schemes as it may deem necessary or finance such schemes of the State governments/Welfare Boards as it may find appropriate, subject to availability of finance by such means as mentioned in Section 8 and may include those listed under (5) below.

(5) The State Government on recommendations of the State Board may formulate such unorganised worker-based schemes as it may find appropriate to: (a) strengthen the national minimum social security by way of its own contribution, and/or (b) design and implement additional social security benefits through its own schemes. These may include:

- a) Provident Fund schemes;
- b) Employment injury benefit scheme;
- c) Housing schemes;
- d) Educational schemes for children of workers;
- e) Skill up-gradation of workers;
- f) Funeral assistance;
- g) Marriage of daughters; and
- h) Any other schemes to enhance the socio-economic security of the unorganised worker.

(6) The Central Government shall have the power to remove difficulties that arise in giving effect to the provisions of the Scheme by an order published in the Official Gazette, not inconsistent with the provisions of the Act, as appears to it necessary or expedient for the removal of the difficulty.

Chapter IV

NATIONAL SOCIAL SECURITY AND WELFARE FUND FOR UNORGANISED WORKERS

8. Constitution of a National Fund

The Central Government shall create a National Social Security and Welfare Fund to which contributions shall accrue from the following sources:

- a) Grants and loans from the Central Government;
- b) Contributions from workers, employers and Governments in the form and manner to be prescribed in the specified National Minimum Social Security Scheme, provided that the Central government may exempt any class of unorganised workers or employers from making their contribution under such conditions as may be specified;
- c) Any tax or cess that the Central Government may impose for the purpose of providing social security for unorganised workers;

- d) Any tax or cess that the Central Government may impose on commodities and/or services in lieu of employers' contributions (which are either difficult to collect or appropriate employers in the unorganised sector are not directly identifiable).

In addition to the above, contributions may also accrue from the following sources:

- e) Contributions from the national financial/developmental institutions; and
- f) Any voluntary contribution from individuals or institutions.

9. Existing Welfare Boards

Notwithstanding any other provision contained under any other law, the Appropriate Government may merge any existing Welfare Board/Boards and Welfare Fund/Funds constituted under any other law into the Board and Fund created under this Act.

10 Exemption from Income Tax

All financial contributions made by individuals and institutions to the National Social Security and Welfare Fund will be exempted from the payment of income tax under the Income Tax Act.

11. Utilisation of the National Fund

All contributions accruing to the National Board shall be credited to the Fund, which shall be applied for meeting the following:

- a) Expenses on the National Social Security Scheme and any other social security schemes of the Central Government;
- b) Grants to the State Boards, including for the purposes of the functioning of the Workers' Facilitation Centres;
- c) Expenses on the administration of the schemes;
- d) Investment in permitted schemes;
- e) Any other item in connection with the administration of this Act.

Chapter V

NATIONAL SOCIAL SECURITY AND WELFARE BOARD FOR UNORGANISED WORKERS

12. Establishment and Incorporation

With effect from such date as the Central Government may, by notification appoint, there shall be established for the purposes of this Act, a Board to be called the National Social Security and Welfare Board for Unorganised Workers.

13. Functions of the Board

The National Board shall perform the following functions:

- a) Administration of this Act and formulation of policies at the national level, and shall have such powers as may be laid down to direct, co-ordinate, supervise, and monitor the functioning of State Boards and the Central Welfare Boards;
- b) Review the working including auditing of the State Boards and the Central Welfare Boards every four years and make suitable recommendations to the Government(s) concerned for further improvement;
- c) Manage and maintain the National Social Security and Welfare Fund, provide financial assistance to State Boards; recommend new schemes and programmes and projects for implementation through the Fund;
- d) Advise the Central Government on policy matters relating to social security, and extension of schemes of social security such as ESI and EPF to unorganised sector workers; and health, safety and welfare of workers;
- e) Assist in capacity building of the State Boards;
- f) Collect, compile and publish statistics relating to the unorganised sector and undertake such promotional activities as may be decided from time to time;
- g) Monitor and review the impact of existing schemes, policies and programmes of various Ministries and Departments of Government of India on the unorganised sector workers and make appropriate recommendations;
- h) Advise the Government regarding the promotion of gainful employment opportunities and promotion of livelihood options and matters relating to welfare of unorganised sector workers;
- i) Identify skill and training requirements for unorganized workers and to advise the government accordingly;
- j) Carry out periodic surveys on the condition of work in the unorganised sector and make suitable recommendations to the government;
- k) Hold public hearings to entertain petitions submitted by the unorganised sector workers and make appropriate recommendations;
- l) Advise government on special protection measures for migrant workers and their families in providing the ration cards, housing and education to their children; and
- m) Provide for guidelines of periodic review of the national minimum wages fixed by the Central Government after taking into account the minimum basic needs of the wage workers and his/her family.

14. Composition of the Board

(1) The National Welfare Board for unorganised workers shall be constituted by the Central Government consisting of the following member organisations:

- a) Central Trade Unions and Agricultural Worker Unions; National level organizations, including federation of such organizations, of unorganised sector workers including the self-employed;
- b) National Level organisations of employers of unorganised sector workers such as associations of tiny and small scale industries;
- c) Central Government Ministries, State Boards, Central Welfare Boards and Public Agencies; and
- d) Experts in the area of management of insurance products and services; social security and related issues in the unorganized sector; management of finances, and other organizations and stakeholders working with the unorganized sector.

(2) The Central Government shall decide the criteria, number and names of such organisations to be represented on the National Board, with adequate representation of wage workers, self employed workers and women representing the workers.

(3) The National Board shall work through a Secretariat.

(4) The Chairman of the National Board shall be nominated by the Central Government from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration. The Member Secretary, who shall be the chief executive officer shall be designated by the Central Government being a person not below the rank of Secretary to the Government of India.

(5) The Board shall meet as often as possible but not less than twice a year.

15. Secretariat of the Board

The National Board shall have a secretariat with adequate professional and other staff. The staff of the National Board shall be governed by the Central Government rules and regulations existing from time to time. The annual budget of the National Board shall be prepared by the Secretariat and placed before the full Board for approval.

Chapter VI

STATE SOCIAL SECURITY AND WELFARE BOARDS FOR UNORGANISED NON-AGRICULTURAL WORKERS

16. Establishment of State Boards

(1) Each State shall have a State Board to implement the national minimum social security as well as design and implement State-level social security and welfare programmes for unorganised non-agricultural workers. The State governments shall constitute the State Boards within one year of the date of commencement of this Act. The State Boards shall have the following as its members:

- a) Trade Unions and non- agricultural Worker Unions; State level organizations, including federation of such organizations of unorganised non-agricultural sector workers including the self employed;
- b) State Level organisations of employers of unorganised non-agricultural sector workers;
- c) State Government Ministries, Welfare Boards and Public Agencies; and
- d) Experts in the area of management of insurance products and services; social security and related issues in the unorganized non-agricultural sector; management of finances, and other organizations and stakeholders working with the unorganized non-agricultural sector.

(2) The State Government shall decide the criteria, number and names of such organisations to be represented on the State Board, with adequate representation of wage workers, self employed and women representing the workers.

(3) The State Board shall work through a Secretariat.

(4) The Chairman of the State Board shall be nominated by the State Government from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration. The Member Secretary, who shall be the chief executive officer shall be designated by the State Government being a person not below the rank of Secretary to the Government of the State.

(5) The Board shall meet as often as possible but not less than twice a year.

17. State Fund

(1) The State government shall create a State Social Security and Welfare Fund to which contributions shall accrue from the following sources:

- (i) Grants and loans from National Board and the State government;
- (ii) Any tax or cess that the State government may impose on commodities and/or services in lieu of employers' contributions (which are either difficult to collect or appropriate employers in the unorganised Sector are not directly identifiable);
- (iii) Contribution toward additional social security scheme (if any) formulated by the State Board;
- (iv) Contributions from the national financial/developmental institutions; and
- (v) Any voluntary contribution from individuals or institutions.

(2) All financial contributions made by individuals and institutions to the State Social Security and welfare Fund will be exempted from the payment of income tax under the Income Tax Act.

(3) All contributions accruing to the State Boards shall be credited to the State Social Security and Welfare Fund which shall be applied for meeting the following:

- a) Expenses on the implementation of the national minimum social security and additional social security schemes of the State Government;

- b) Grants to the Welfare Boards and the Workers' Facilitation Centres;
- c) Expenses on the administration of the State Board as per the annual budget approved by the Executive Council;
- d) Investment in permitted schemes; and
- e) Any other item in connection with the administration of this Act.

18. Functions

The State Boards will perform the following functions:

- a) Administer this Act at the State level including ensuring collection of contributions, maintenance of individual accounts of the registered non-agricultural workers and records of receipt of contribution from individual employers;
- b) Implement the national minimum social security for unorganised non-agricultural workers through appropriate organisational arrangements, negotiate with the providers for the best possible offers, and stipulate norms for the evaluation of the work done by the Workers' Facilitation Centres;
- c) Frame guidelines to ensure portability of benefits to workers;
- d) Frame and implement social security schemes, in addition to the National Social Security Scheme, that the State Board may design in consultation with the State government;
- e) Provide financial assistance to other member organisations implementing social security programmes;
- f) Advise the State government on policy matters relating to social security, health and safety and welfare of non-agricultural workers;
- g) Create awareness among the unorganised non-agricultural workers about the need for social security registration and the existence of various social security schemes;
- h) Collect, compile and publish statistics, with the help of statistical organisations, regarding non-agricultural workers and their conditions of work, and employers who engage these workers at the *Panchayat*/Municipal, District, State levels with such details as gender and age, nature of occupation, level of earnings, etc.;
- i) Review the working of the Welfare Boards and other implementing agencies on the basis of annual reports and statements of audited accounts or specially commissioned reports and make suitable recommendations to the government(s) concerned for further improvement;
- j) Assist in capacity building of Workers Welfare Boards and Workers' Facilitation Centres;

- k) Initiate innovative approaches, through interaction across sectors and constituencies, for the enhancement of welfare, working conditions and productivity of unorganised non-agricultural workers;
- l) Submit annual report to the National Board within four months from the last day of the previous financial year along with an audited statement of accounts;
- m) Monitor and review the impact of existing schemes, policies and programmes of various Ministries and Departments of the concerned State Government on the unorganised non-agricultural sector workers and make appropriate recommendations;
- n) Advise the Government regarding the promotion of gainful employment opportunities and promotion of livelihood options for unorganised non-agricultural sector workers;
- o) Encourage the promotion of labour organizations and cooperatives to secure gainful employment and dignified conditions of work;
- p) Identify skill and training requirements for both self employed workers and wage workers in the unorganised non-agricultural sector and to advise the government accordingly;
- q) Carry out periodic surveys on the condition of work in the unorganised non-agricultural sector and make suitable recommendations to the government;
- r) Hold public hearings to entertain petitions submitted by the unorganised non-agricultural sector workers and make appropriate recommendations;
- s) Carry out surveys to determine the safety and health standards required in different occupations and employments in the unorganised non-agricultural sector, and publish manuals and outreach programmes for worker safety;
- t) Review the Minimum Wages for the state after taking into account the cost of living and minimum basic needs of the non-agricultural wage workers and his/her family;
- u) Constitute Employment Certification Committee to bring the wages in employments performed predominantly by women on par with employments certified as equivalent in value and periodically evaluate employments in the state for this purpose;
- v) Carry out periodic studies on occupational hazards arising in this sector and develop suitable outreach/extension programmes for this purpose; and
- w) Make provisions for improvement in housing, rational use of public spaces keeping in mind the needs of the self employed non-agricultural workers working from their homes/rented premises/streets or public spaces to improve their working conditions .

19. Secretariat of the Board

The State Board shall have a secretariat with adequate professional and other staff. The staff of the State Board shall be governed by the State government rules and regulations existing from time to time.

Chapter VII

REGISTRATION OF UNORGANISED NON-AGRICULTURAL WORKERS

20. Eligibility for registration and for social security benefits

Every unorganised non-agricultural worker shall be eligible for registration subject to the following conditions:

- a) He/she should have completed 18 years of age;
- b) His monthly income does not exceed Rs.7000/- in 2007 (roughly equivalent to Rs. 6500/- per month recommended by the Indian Labour Conference held in December 2005); and
- c) A self-declaration confirming that he/she is an unorganised non-agricultural worker.

21. Unique Identification Social Security Number

Each registered non-agricultural worker shall be eligible for receiving a Unique Identification Social Security Number in the form of an Identity Card issued in the name of the State Board.

22. Identity card

The State Government shall decide the manner of registration of unorganized non-agricultural sector workers, issuance of identity cards and manner of record keeping at the district level.

23. Portability of registration

The Identity Card issued to non-agricultural workers shall remain valid even in the case of migration to another district in the country and the new address can be changed on application to the authority concerned.

24. Cessation of registration

The National Board shall draw up rules to decide on the period of validity of registration, renewals, cessation of registration and settlement of claims on the death of the card holder.

25. Membership of Existing Welfare Boards

In case, any unorganised non-agricultural worker is eligible for benefit under one or more existing Central or Welfare Boards, in addition to his eligibility for the National Minimum Social Security Scheme,

- (1) The non-agricultural worker shall retain the option of membership of the Fund with the highest benefit.
- (2) The National/State Board may decide the criteria on which the non-agricultural worker can be eligible for benefit under the National Minimum Social Security Scheme in addition to membership in other Boards/schemes.

Chapter VIII

DELIVERY OF SOCIAL SECURITY BENEFITS

26. Implementation Machinery

The State Boards shall be responsible for the delivery of mandatory minimum social security benefits and shall decide the manner in which social security benefits shall have to be delivered to the registered non-agricultural workers. This may include tie-ups with local organisations like banks, post offices and insurance companies.

27. Workers' Facilitation Centres

(1) In order to extend coverage and reach the unorganised non-agricultural workers in remote areas, the State Boards may designate any one or more of the following at the local level as Workers' Facilitation Centres (WFC):

- a) Existing Worker Welfare Boards and their local offices;
- b) Local Panchayati Raj Institutions (PRI) or urban local bodies;
- c) Organisations of workers including trade unions, associations and co-operatives in the unorganised non-agricultural sector;
- d) Self-help Groups (SHGs); and
- e) Non-profit organisations working among the unorganised non-agricultural sector workers.

(2) Such designated Workers' Facilitation Centres shall perform the following functions:

- a) Disseminate information on available social security schemes for the non-agricultural workers;
- b) Facilitate the filling, processing and forwarding of application forms for registration of non-agricultural workers;

- c) Obtain registration from the District Committee and deliver the Identity Cards to the registered non-agricultural workers;
- d) Facilitate the enrollment of the registered non-agricultural workers in social security schemes; and
- e) Facilitate the delivery of social security benefits through the institutions designated to deliver such social security (insurance companies, post offices, Departments of the State/Central Government and other institutions concerned).

(3) The State Boards shall compensate the costs incurred by the Workers' Facilitation Centres for performance of its functions.

28. Premium and Compensation/Benefits

(1) The National Board shall decide the amount and manner of payment of contribution/fee by the non-agricultural workers to the National Social Security Schemes.

(2) For schemes initiated by the State Boards, the State Board concerned shall decide the contributions of non-agricultural workers and employers.

(3) The claim of registered non-agricultural workers for social security benefits shall lie solely against the State Board and it shall be the responsibility of the State Board to settle the dues, if any.

Chapter IX ENFORCEMENT AND DISPUTE RESOLUTION BODIES

29. Disputes Resolution Council and Conciliation Committees

(1) The State Government shall, by rules, constitute Dispute Resolution Council (DRC) at District level and Conciliation Committees (CC) at an appropriate level below the district level i.e Block/Tehsil/Mandal level, for resolution of disputes relating to the non observance of provisions of this Act arising amongst the Unorganised non-agricultural wage workers / home workers, employers, Workers' Facilitation Centres and State Boards.

(2) The Composition of the DRCs and CCs shall be tripartite and consist of an officer designated by the State Government to be the Member Secretary, one person nominated from the most representative of membership-based organisations of the unorganised non-agricultural workers in that State, having membership in the district, and a person nominated from the most representative organisation of employers' organisations in the unorganised non-agricultural sector in the state. The State government, may, if it thinks fit, appoint two persons as assessors to advice the conciliation Committee on the proceedings before it.

(3) When there is a complaint regarding sexual harassment, the CC/DRC shall co-opt two other members from the Panchayats/local bodies, who shall be women, at the time of dealing with such complaints. The CC/DRC, if satisfied that a case of sexual harassment is established, direct the employer to ensure that necessary action is taken against the person guilty of such conduct.

(4) The honorarium and/ or the allowances to be paid to the workers and employers representatives on the DRC shall be determined by the State Government.

(5) The persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other related conditions, the procedure to be followed in the discharge of their functions, conduct of meetings, periodicity of meetings and the manner of filling vacancies among the members of the CC/DRC, shall be such as may be prescribed by the State Government.

(Note: In order to determine the most representative organisation, membership figures including the verification of trade unions carried out by the CLC may be relied upon.)

30. Functions and powers of the Conciliation Committee and Dispute Resolution Council

(1) Any unorganised non-agricultural wage worker or employer or an organisation representing such worker or Workers' Facilitation Centres or the State Board may raise a dispute relating to the non-observance of provisions of this Act by filing a complaint before the Conciliation Committee in the manner prescribed by the State Government. The DRC may also take *suo moto* cognizance of such disputes.

(2) Every complaint so filed shall be deemed to be a dispute under this Act notwithstanding that such a complaint had not been referred to the employer at the first instance, and been rejected.

(3) The status of employment of non-agricultural workers in the dispute raised before the CC or DRC shall not be affected merely for the reason that a complaint regarding non observance of provisions of this Act has been raised before the DRC or CC.

(4) (a) Upon reference of a dispute, the Conciliation Committee shall proceed to arrive at a conciliated settlement. The Conciliation Committee shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters connected therewith, and may do all such things as they think fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(b) The Labour Enforcement Officers (LEOs) of the Labour Departments of the concerned state shall assist the CC/DRC in their duties and shall carry such investigation of complaints as required by the CC/DRC.

(c) Where the CC/DRC apprehends violation of the provisions of this Act the LEOs may be directed to investigate and report the matter expeditiously.

(5) The CC/DRC or the LEOs designated for this purpose under sub-section 4(b) above may for the purpose of investigating the dispute, after giving reasonable notice, enter the premises to which the dispute relates. The Conciliation Committee shall also have the powers under the Code of Civil Procedure 1908 to enforce the attendance of parties, compel the production of documents and material objects.

(6) The Conciliation Committee may if it thinks fit appoint one or more persons having special knowledge of the matter under consideration to advise it on the proceeding before it.

(7) The time limit for the conclusion of the proceedings of the CC shall not exceed four weeks. Where the parties to the dispute apply in the prescribed manner, whether jointly or separately, to the CC for the extension of such period and the member-secretary of the CC considers it necessary or expedient to extend such period, he/she may for reasons to be recorded in writing, extend such period by such further period as he/she may think fit;

Provided that no proceedings before a CC shall lapse merely on the ground that the period specified under this sub section has expired without such proceedings being completed.

(8) If the Conciliation Committee is able to arrive at a conciliated settlement, it shall record its finding to such effect and shall issue such directions as considered necessary.

(9) Upon failure of such conciliation proceedings, the Conciliation Committee shall record its findings and refer the dispute to the DRC, which shall within two weeks of receipt of reference, refer the matter to the adjudicator provided in this section.

(10) Where a dispute is raised directly before the DRC, the DRC shall ordinarily refer the dispute to the CC below it, under whose jurisdiction the dispute falls.

(11) In cases of disputes raised directly before it or referred to it by the CC under subsection (9) above, the DRC may itself seek to bring about a conciliated settlement.

(12) In such cases, the DRC shall have all the powers mentioned in section (4) and (5) specified above.

(13) If the DRC is able to arrive at a conciliated settlement, it shall record its finding to such effect and shall issue such directions as considered necessary.

(14) In case of failure of conciliation, the DRC shall record its finding and refer the matter directly to the Adjudicator referred to in section 31, within 4 weeks of the reference of the dispute. Where the parties to the dispute apply in the prescribed manner, whether jointly or separately, to the DRC for the extension of such period and the member-secretary of the DRC considers it necessary or expedient to extend such period, he/she may for reasons to be recorded in writing, extend such period by such further period as he/she may think fit.

Provided that no proceedings before a DRC shall lapse merely on the ground that the period specified under this sub section has expired without such proceedings being completed.

(15) The DRC shall also monitor the functioning of the CCs.

(16) Where the dispute pertains to any matter covered by any law mentioned in Section 6(1), the CC/DRC shall forward the complaint to the appropriate authority created under the relevant Act for adjudication.

31. Adjudication

(1) The State Government shall by notification in the Official Gazette appoint any officer of the Government not below the rank of a District Labour Officer for each district, or any officer with experience as Civil Judge or as Magistrate to be the Adjudicator under the section. The Adjudicator shall hold sessions in such Block/ Tehsil/Mandal towns and with such frequency, as may be specified in the rules made in this behalf by the State Government, in order to adjudicate upon the disputes referred to it by the DRCs at the Block/ Tehsil/Mandal level.

(Note: NO appeal has been provided for under this Act. Moving the High Courts under Art. 226 of the Constitution would of course be available).

(2) The State Government shall issue such notifications and directions as are necessary to ensure that the adjudication proceedings are concluded expeditiously with minimum loss of time and costs to the parties involved. The award of the Adjudicator shall be publicised in the manner as prescribed by the State Government.

(3) The designated department(s) of the State Government concerned shall be responsible for enforcement and implementation of the provisions of this Act.

32. Contravention of provisions regarding employment of unorganised non-agricultural workers

(1) Whoever contravenes any provisions of this Act or the rules made there under, other than those made punishable under any other law, regarding the employment of unorganised, **non-agricultural** workers shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and in case of continuing contravention, with additional fine which may extend up to one hundred rupees for every day during which such contravention continues.

(2). No court shall take cognizance of an offence punishable under this Act or the abetment of any such offence, save on a complaint made by, or the previous sanction in writing of or under the authority of the State Government. No court inferior to that of a Metropolitan Magistrate or a judicial magistrate of the first class shall try any offence punishable under this Act.

(3). No suit, prosecution or other legal proceeding shall lie against any person for anything done in good faith or intended to be done in pursuance of this Act or rules.

(4) No court shall take cognisance of an offence punishable under this Act unless the complaint is made within six months from the date on which the alleged commission of the offence came to the knowledge of the CC or the DRC concerned.

(5) Any person who commits a breach of any conciliated settlement arrived at in the CC or DRC or final award by the adjudicator, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, [and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first] and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach.

(6) Where any money is due to a unorganised sector non-agricultural worker under a settlement or an award, the workman himself or any other person authorized by him in writing in

this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the state government for the recovery of the money due to him, and if the state government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

Chapter X

MISCELLANEOUS

33. Accounts and Audit

- (a) The National Board and the State Boards shall maintain proper accounts and other relevant records and prepare annual statements of accounts in such form as may be prescribed.
- (b) The National Board shall furnish to the Central Government, before such date as may be prescribed, the audited copy of the consolidated account of itself and the Funds together with the auditor's report.

34. Power to make Rules

The Central and State governments shall have the power to make rules for the purposes of carrying out the objects of the Act.

35. Savings

(1) This law will not affect the application of any other State or Central Acts which applies to the unorganised non-agricultural worker or to the employer under this Act. (Note: Even if the employer or establishment is covered, the non-agricultural worker who is not covered under the formal sector law would get benefit under this law for the matter covered here).

(2) Notwithstanding anything contained in this Act, wherever any unorganised non-agricultural worker is eligible for superior or better benefits under any existing law in force the worker shall continue to be entitled for such benefits.

36. Effect of laws and agreements inconsistent with this Act

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the coming into force of this Act.

(2) Nothing contained in this Act shall be construed to preclude a unorganised non-agricultural worker from entering into an agreement with his/her employer for granting him/her rights or privileges in respect of any matter which are more favourable to him/ her than those to which he/she would be entitled under this Act.

* * * * *

**Schedule of the Unorganised Non-agricultural Workers Conditions Of Work
And Social Security Bill, 2007.**

(See section 7 (1))

National Social Security Scheme for Unorganised Non-agricultural Workers

Back ground

The unorganised non-agricultural workers in the Unorganised Sector face problems that arise out of deficiency or capability deprivation in terms of inadequate employment, low earnings, low health, etc., as well as of adversity in the absence of fall back mechanisms (safety net). These workers have limited or no formal social security cover which increases their vulnerability during times of illness, old age, unemployment and untimely death. The absence of social security mechanisms is a critical factor in downturns in the conditions of these households, many of whom are already very poor. It destroys the workers ability to contribute meaningfully, and to increasing production and productivity. It leads to disaffection increasing social costs, widespread crimes, and persistent ill health. Presently, less than 6% of the entire unorganised sector workforce has recourse to any social security cover.

Objectives

1. To provide for a right based entitlement for the unorganised non-agricultural workers, and
2. To provide for a universal national minimum social security scheme to cover all the workers in the unorganised non-agricultural sector in a phased manner within a period of 5 years.

Definitions

Words and expressions shall have the meaning respectively assigned to them under Section. 2 of the Act.

Coverage and eligibility

This scheme may be called the National Social Security Scheme, 2007.

This scheme shall come into force on....

This scheme applies to all unorganised non-agricultural workers, hereafter referred to as 'worker' to whom the Act extends who

- a) has completed 18 years of age;
- b) whose monthly income does not exceed Rs.7000/- in 2007 (roughly equivalent to Rs. 6500/- per month recommended by the Indian Labour Conference held in December 2005);
- c) has submitted a prescribed self-declaration form confirming that he/she is an unorganised non-agricultural worker ;and

- d) has paid the contribution/ fee as prescribed.

Benefits

The national social security scheme shall provide for a package of the following minimum benefits:

(a) Health Insurance

- (i) Each worker will be entitled to hospitalization for himself and his family members, costing Rs. 15000 a year in total with Rs. 10000 maximum per ailment in designated, hospitals or clinics, public or private, recognized by the State Board, with at least 15 beds. If there is no such clinic available within 10 kilometers from the worker's residence, he would be entitled to a transport cost to the nearest hospital on actuals upto a maximum of 5% of hospital cost. All payments will be made by the insurance company to the clinics/hospitals directly and except for the transportation cost, no cash payment will be made to the workers;
- (ii) Maternity Benefits of Rs. 1000 maximum or actuals for the member or the spouse, per year;
- (iii) Sickness cover of Rs 750/- for earning head of family (during hospitalisation) for 15 days (only in excess of 3 days) during the policy period @ Rs 50/- per day.

(b) Life and disability cover

In case of Natural Death:	Rs. 30,000/-
In case of Death or total disability due to accident:	Rs. 75,000/-
In case of Partial Permanent Disability due to accident:	Rs. 37,500/-

(c) Old Age Security

- (v) All BPL unorganised non-agricultural workers will get a monthly pension of Rs. 200 at 60 plus. This would be irrespective of the year of his/her registration with the scheme.
- (vi) All unorganised non-agricultural workers other than BPL and registered in the scheme will be entitled to a Provident Fund which will accumulate to his account from the year of his/her registration.
- (vii) At the end of 60th year the APL unorganised non-agricultural worker will have 3 options. He can continue with the provident fund scheme by contributing the full premium i.e. both the government's and his contribution, or, withdraw the whole amount of the Provident Fund accumulated to that date, or alternatively, he could buy an Annuity with the accumulated amount and the returns would be like his pension.

- (viii) The Provident Fund Scheme can also be used as unemployment insurance. After 10 years' contribution, the worker, if he becomes unemployed and is verified to be so by the Workers Facilitation Centre (WFC), he would be entitled to draw up to 50% of the accumulated sum as unemployment benefits for a period of 6 months. After six months or before that if he becomes employed again, the worker will be able to continue with the scheme by renewing his contribution.

Organization

The organization model is federal in character where the implementation will be the responsibility of the State Social Security and Welfare Board for unorganised non-agricultural workers (SSSWB) with the assistance of WFC at the grass root level, supervised and monitored by the National Social Security and Welfare Board.

The structure is as follows:

- (i) There will be a National Social Security and Welfare Board (NSSWB) at the central level, representatively constituted, with the central government as the prime mover. This National Board will be supervising and monitoring the implementation of the scheme at different levels and will also be responsible for running for National Social Security and Welfare Fund (NSSWF).

At the state level there would be a State Social Security and Welfare Board for unorganised non-agricultural workers (SSSWB), representatively constituted, which will be the main implementing agency at the grassroots level through Workers Facilitation Centre (WFC).
- (ii) The WFC would be appointed by the SSSWB, keeping in mind the need to make them as representative as possible with the participation of institutions/organisations listed under section 27(1) of the Bill. WFC would perform the various functions as listed in section 27(2) of the Bill.
- (iii) SSSWBs will negotiate with the insurance agency and other service providers with the help of National Social Security and Welfare Fund (NSSWF), the best possible terms for providing the prescribed benefits and also the selection of health care institutions.
- (iv) SSSWBs would also set up their State Social Security and Welfare Fund (SSSWF) from sources specified in section 17, which would accumulate till they are transferred to the accounts of the beneficiaries held by the designated institutions such as Post Offices/ banks. National Social Security and Welfare Fund (NSSWF) contribution should also be deposited with SSSWF for being transmitted to the workers account once the scheme starts implementation.

Financing

The scheme would be financed by the National Social Security and Welfare Fund (NSSWF) through any of the sources as specified in section 8 of the Act. However, the share of contribution of the BPL workers, if any, would be borne by the Central Government.

The total outlay of the scheme proposed for unorganised non-agricultural workers when all of them are covered is estimated at Rs 12954 crore, which may be entirely borne by the Central Government. If however, the total cost is shared between the Centre and States in the ratio of 75:25, then, the Centre's and the State Governments' share is estimated at Rs 9715 crore and Rs 3239 crore respectively. The share of both Centre and States could be further reduced, if contributions of employers and workers or tax/ cess as mentioned in section 8 are available.

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APPENDICES

Appendix 1

Past and Present Composition of the Commission

The composition of the Commission is as follows:

Professor Arjun Sengupta, Chairman, Centre for Development and Human Rights New Delhi	Chairman [From 20.09.2004 to 01.07.2005 and from 17.11.2005 till date]
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Professor K. Jayashankar, Former Vice Chancellor, Kakatiya University, Warangal, Andhra Pradesh.	Full-time Member [From 01.12.2004 to 9.03.2006]
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Professor K. P. Kannan, Fellow, Centre for Development Studies, Ulloor, Thiruvananthapuram 695011, Kerala.	Full-time Member [From 01.11.2004 till date]
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Professor Ravi S. Srivastava, Professor, Centre for Studies in Regional Development, Jawaharlal Nehru University, New Delhi 110067.	Full-time Member [From 01.05.2006 till date]
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Shri B.N. Yugandhar, Member, Planning Commission, New Delhi 110001.	Part-time Member [From 05.11.2004 till date]
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Shri Bibek Debroy, Director, Rajiv Gandhi Institute for Contemporary Studies, New Delhi 110001.	Part-time Member [From 27.10.2004 to 20.12.2005]
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Professor T.S. Papola, Director, Institute for Studies in Industrial Development, Vasant Kunj Institutional Area, New Delhi.110070	Part-time Member [From 06.04.2005 till date]
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Shri K.K. Jaswal, IAS (Retd.)	Member Secretary [From 01.11.2004 to 18.02.2006]
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Shri V.K. Malhotra, IAS (Retd.)	Member Secretary [From 01. 03.2006 till date]
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Appendix 2

Composition of the Advisory Board

1. **Professor Bhalchandra Munekar,**
Member, Planning Commission,
Yojana Bhavan, New Delhi.
2. **Professor Amit Bhaduri,**
Council for Social Development,
53, Lodhi Estate, New Delhi – 110003.
3. **Swami Agnivesh,**
President, Bonded Labour Liberation Front,
13, South Avenue, New Delhi.
4. **Professor Sheila Bhalla,**
(Formerly Professor of Economics, Jawaharlal Nehru University, New Delhi)
Institute of Human Development, old IAMI Building (3rd Floor).
I.P.Estate, Mahatma Gandhi Marg, New Delhi-110002.
5. **Professor Jean Dreze,**
Delhi School of Economics, Department of Economics,
Delhi University, Delhi-110007.
6. **Professor Mahendra Dev,**
Director, Centre for Economic and Social Studies,
Begumpet, Hyderabad.
7. **Ms. Madhu Kishwar,**
Editor, Manushi
C-1/3 Sangam Estate, 1, Underhill Road, Civil Lines,
Delhi-110054.
8. **Ms. Mirai Chatterjee,**
Self Employed Women's Association (SEWA)
Opposite Victoria Garden, Bhadra, Ahmedabad-380001.
9. **Shri Joginder Kumar**
President, Federation of Tiny & Small Scale Industries of India (FTSSI),
General Metal Industries, B-189, Industrial Estate, Ludhiana, Punjab.
10. **Shri Nachiket Mor,**
Executive Director, ICICI Bank Limited
ICICI Tower, Bandra Kurla Complex, Mumbai.

Appendix 3

Terms of Reference of the Commission

The Government of India, constituted the National Commission for Enterprises in the Unorganised Sector (NCEUS) vide Ministry of Small Scale Industries Resolution No. 5(2)/2004-ICC dated 20th September, 2004, under the Chairmanship of Professor Arjun Sengupta. The Terms of Reference of the Commission are as follows:

- i. Review the status of unorganized/informal sector in India including the nature of enterprises, their size, spread and scope, and magnitude of employment;
- ii. Identify constraints faced by small enterprises with regard to freedom of carrying out the enterprise, access to raw materials, finance, skills, entrepreneurship development, infrastructure, technology and markets, and suggest measures to provide institutional support and linkages to facilitate easy access to them;
- iii. Suggest the legal and policy environment that should govern the informal/unorganized sector for growth, employment, exports and promotion;
- iv. Examine the range of existing programmes that relate to employment generation in the informal/unorganized sector and suggest improvement for their redesign;
- v. Identify innovative legal and financing instruments to promote the growth of the informal sector;
- vi. Review the existing arrangements for estimating employment and unemployment in the informal sector, and examine why the rate of growth in employment has stagnated in the 1990s;
- vii. Suggest elements of an employment strategy focussing on the informal sector;
- viii. Review Indian labour laws, consistent with labour rights, and with the requirements of expanding growth of industry and services, particularly in the informal sector, and improving productivity and competitiveness; and
- ix. Review the social security system available for labour in the informal sector, and make recommendations for expanding their coverage.

[1] See Section 35(2) and 36(2) of the Bills.

[2] See Chapter 5 of the Bills

[3] See Chapter 2, Section 6 of the Bills.

[4] Ibid., Section 6(2) ©

[5] Chapter V, Section 13(m) of the Bills.

[6] Chapter VI, Section 18(t) of the Bills.

[7] Chapter II, Section 6(5)

[8] Chapter II, Section 6(6)

[9] Chapter II, Section 6(3)

[10] Chapter II, Section 6(4) of the Bills.

[11] Chapter II, Section 4(4) of the Bills.

[12] Chapter IX, Section 29(3) of the Bills.

[13] Chapter II, Section 6(7) of the NAWB.

[14] Chapter II, Section 6(6)

[15] Chapter II, Section 6(9) of the AWB, and Section 6(10) of the NAWB.

- ^[16] Chapter 2, Section 6, Clause 7(b) in the AWB and Clause 8(b) in the NAWB.
- ^[17] Chapter 2, Section 6, Clause 8(a) in the NAWB. A general provision is also included in Clause 8(a) of the AWB.
- ^[18] Chapter 2, Section 6, Clause 7(c) of the AWB and Clause 8(c) of the NAWB.
- ^[19] Chapter 2, Section 4(2) of the Bills.
- ^[20] Chapter 2, Section 4(3) of the Bills.
- ^[21] Chapter 5, Section 14 (1) and Chapter 6, Section 16(1) of the Bills.
- ^[22] Chapter 9, Section 29 of the Bills.
- ^[23] Chapter 9, Section 30 (4-8) of the Bills.
- ^[24] Chapter 9, Section 30 (14) of the Bills.
- ^[25] Chapter 3, Section 7 (2) of the Bills lays down the type of benefits. The quantum of minimum benefits in the package are laid down in the Schedule to the Bills.
- ^[26] Chapters 5 and 6 of the Bills.
- ^[27] Chapter 8, Section 27 of the Bills.
- ^[28] Chapter 5, Section 14 (1) of the Bills.
- ^[29] Chapter 5, Section 14 (4) of the Bills.
- ^[30] Chapter 4, Section 8 of the Bills.
- ^[31] Chapter 3, Section 13 of the Bills.